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Jewish cemeteries

Report[1]
Committee on Culture, Science, Education and Media
Rapporteur: Mr Piet De BRUYN, Belgium, Members not belonging to a Political Group

Summary

There are numerous Jewish cemeteries in Europe and they need to be protected and preserved. They are part of the European cultural heritage and constitute an important element of the Jewish religion. These cemeteries are probably more at risk than those of other confessions represented in Europe, on account of the Jewish people's tragic history which led to the extermination, exodus or resettlement of many local communities. Governments, members of Jewish communities and heritage organisations have a responsibility to develop appropriate forms of co-operation to ensure their protection.

The Council of Europe member States are invited to implement a number of practical recommendations and to promote joint actions among different stakeholders. The European Union should also co-operate with the Council of Europe in developing guidance and financial incentives for the protection and preservation of Jewish heritage sites, in particular in the framework of the Council of Europe Enlarged Partial Agreement on Cultural Routes and through concrete support for the effective implementation of the Framework Convention on the Value of Cultural Heritage for Society.

1. Reference to committee: Doc. 12115, Reference 3641 of 29 January 2010.

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A. Draft resolution[2]

1. The Parliamentary Assembly recalls the historical contribution made by Jewish communities to creating the social, cultural and economic fabric of Europe and underlines the importance of preserving the religious, historical and cultural identity of Jewish communities.

2. The Assembly asserts the importance of freedom of religion and religious expression and upholds the right to rest in peace, interpreted as a specific aspect of the right to respect for private and family life, guaranteed by Article 8 of the European Convention on Human Rights (ETS No. 5). The Assembly considers that there is a responsibility to protect human dignity in a broader sense by ensuring that deceased persons are preserved in their place of burial in a manner compatible with their religious practice.

3. Jewish cemeteries and mass graves (hereafter "burial sites") are part of the European cultural heritage. The Council of Europe Framework Convention on the Value of Cultural Heritage for Society (Faro Convention, 2005) establishes an important link between the protection of fundamental rights and heritage protection and affirms a "common European responsibility" towards cultural heritage, which embraces not only the exceptional, but also the commonplace heritage and the values attached to it.

4. The Jewish people's tragic history led to the extermination, exodus or resettlement of many local communities. Although there are often traces of former cemeteries in towns and villages that have lost their Jewish populations, their preservation and protection are under constant threat.

5. The Assembly notes that damage suffered by Jewish burial sites in Europe is not confined to desecration, but is very often a result of inadequate management, lack of funding, infringements of protective measures, inadequate town planning or misuse of property.

6. Moreover, the legal status of Jewish burial sites is complex, given the variety of legal situations in which both these sites and Jewish communities find themselves in different European countries. It may also occur, particularly in central and eastern Europe, that a specific legal status has simply been disregarded or overlooked following important changes in the political systems.

7. The Assembly, however, also draws attention to positive examples of joint efforts to protect and preserve Jewish burial sites that have been undertaken by local and international Jewish and non-Jewish organisations in co-operation with local authorities throughout Europe. They demonstrate a wish to foster an awareness of and draw lessons from history, and a determination to shoulder a common responsibility for preserving this heritage.

8. A European Route of Jewish Heritage – established under the auspices of the Council of Europe Enlarged Partial Agreement on Cultural Routes – creates opportunities and incentives for the protection and restoration of the Jewish heritage, including burial sites, in the framework of its overall objective to contribute to the spiritual and historical rebuilding of destroyed Jewish communities and to enhanced knowledge about Europe's history.

9. The Assembly therefore recommends that the member States of the Council of Europe:

9.1. sign, ratify and implement the Faro Convention;

9.2. join the Council of Europe Enlarged Partial Agreement on Cultural Routes and, where appropriate, its European Route of Jewish Heritage, which provides an excellent framework for concerted action nationally and internationally;

9.3. review, as required, the national legal, financial and professional frameworks, in order, *inter alia*, that:

9.3.1. relevant regulations, such as town planning, take account of specific conservation requirements;

9.3.2. effective controls of local development projects avoid violation of Jewish burial sites;

9.3.3. decisions about changes on these sites take due account of Jewish cultural and religious values and traditions;

2. Draft resolution adopted unanimously by the committee on 24 April 2012.

9.4. in partnerships with relevant local authorities and interested Jewish organisations, such as the Committee for the Preservation of Jewish Cemeteries in Europe and the Agudath Israel World Organization, develop initiatives to enhance the management, maintenance, preservation and restoration of Jewish burial sites and, in particular:

9.4.1. encourage joint action between public authorities and relevant stakeholders, such as experts, academia, public and private archives, businesses and non-governmental organisations;

9.4.2. identify and collect best practice, and draw up national guidelines;

9.4.3. organise programmes for locating Jewish burial sites, using non-invasive technical devices (such as ground-penetrating radar) and facilitate technical investigations and identification of sites;

9.4.4. establish and keep up to date virtual libraries of the sites, with maps, photographs and testimonies;

9.4.5. promote knowledge of local history and of Jewish local cultural heritage as part of local development strategies;

9.4.6. raise the awareness of local communities to the urgent need to preserve the sites in danger of desecration, damage or disappearance;

9.4.7. initiate or encourage pilot projects involving schools and local associations in building protective walls, taking part in cemetery maintenance, consulting local archives, “adopting” cemeteries, etc.;

9.5. co-operate with the Council of Europe to:

9.5.1. develop practical tools to promote implementation of the Faro Convention, such as participatory mechanisms to involve heritage communities in the protection, restoration, maintenance and transmission of local cultural and religious heritage;

9.5.2. exchange best practice and develop common guidelines for the protection of the Jewish heritage, including Jewish burial sites;

9.5.3. promote, in co-operation with local and international Jewish organisations, learning about Jewish history, with a particular focus on the positive contribution of Jewish individuals, communities and culture to European societies, and their role in national and local history.

10. The Assembly invites the Congress of Local and Regional Authorities of the Council of Europe to take account of the present resolution and to promote co-operation between local and regional authorities in this respect.

11. The Assembly invites the European Union to co-operate with the Council of Europe to support the effective implementation of the Faro Convention and to develop guidance and financial incentives for the protection and preservation of Jewish heritage sites in the framework of the Council of Europe Enlarged Partial Agreement on Cultural Routes.

B. Explanatory memorandum by Mr De Bruyn, rapporteur

1. Introduction

1. This report was initiated by a motion for a recommendation presented by Mr Mátyás Eörsi and several of his colleagues in January 2010 (Doc. 12115). The motion was based on the following historical and religious factors:

– in the Jewish religion, the cemetery has a holy character that is greater than that of even synagogues. It is the "house of Life/of the living" where the souls, which maintain an unbreakable link with the bodies of the deceased, await the coming resurrection;

– the extermination of the Jews in many European countries during the Second World War led to the disappearance of European Jewish communities and the consequent enforced abandonment of many cemeteries;

– the critical state of disrepair and the persistence of anti-Semitism in Europe create a need for special measures to protect and preserve Jewish cemeteries and mass graves.

2. In the past, the Assembly has had several occasions to consider questions relating to the preservation and development of traditional religious cultures, particularly in its Resolution 885 (1987) on the Jewish contribution to European culture and its Recommendation 1291 (1996) on Yiddish culture, which are of relevance to this report.

3. The rapporteur wishes to thank Mr Eörsi for initiating the motion for a recommendation and Ms Blanca Fernandez-Capel Baños, the first rapporteur, who presented the outline report to the Committee on Culture, Science, Education and Media in January 2011. The present explanatory memorandum builds on the themes outlined by Ms Fernandez-Capel Baños. The rapporteur has been assisted in this task by a consultant expert, Rabbi Mendel Samama who has co-operated with the team of the Grand Rabbi of France Gilles Bernheim to gather relevant information on the current situation of Jewish cemeteries and mass graves in Europe which forms a basis for the analysis in sections 2 and 3.

4. At its meeting on 6 March 2012, the committee held an exchange of views with Professor Louis-Léon Christians, Chair of Law and Religion at the Catholic University of Louvain in Belgium, and Ms Petya Totcharova, Head of the Europe Unit at the UNESCO World Heritage Centre, whose expertise and presentation contributed to the analysis in section 4. The rapporteur also wishes to thank Mr Daniel Thérond, Head of the Culture, Heritage and Diversity Department at the Council of Europe Directorate General of Democracy (DGII), who provided valuable guidance on the provisions of the Council of Europe Framework Convention on the Value of Cultural Heritage for Society (CETS No. 199, "Faro Convention") that are of direct relevance to the issues raised by this report.

5. The present report focuses on Jewish cemeteries. Indeed, they may be considered to be more vulnerable than holy places of other religions. However, the latter are also affected by problems of profanation. As the Council of Europe Commissioner for Human Rights, Mr Thomas Hammarberg, stated in November 2010: "In recent months, desecrations of Muslim, Jewish, Christian Orthodox and Catholic cemeteries have occurred in a number of European countries, including the Czech Republic, France, Greece, Poland, Russia and Turkey … Such acts of disrespect occur in almost all Council of Europe member States. These hate crimes are urgent human rights issues."

6. Other examples of profanation and threats to religious heritage sites can be found in countries where population movements, particularly resulting from conflicts, such as in the former Yugoslavia, have separated communities from their places of worship. In Bosnia and Herzegovina for example, more than 3 200 religious sites were damaged or totally destroyed in the 1990s. Many were listed as cultural and historic heritage sites. The economic crisis, lack of funding and slow rate of return of ethnic minorities to war-affected regions are the main reasons for a standstill in reconstruction and restoration efforts. Religious representatives of Muslim, Catholic, Orthodox and Jewish communities all agree that in areas where minorities decide not to return, it is very difficult to restore and "revive" damaged religious heritage. In addition, priority investments are allocated for reconstruction of housing, schools, hospitals, enterprises and infrastructure which are all necessary to boost the economic development of the country.

7. The lessons learnt from the following analysis and the conclusions of this report, including the proposals made to enhance protection and preservation of Jewish burial sites, could therefore also apply, *mutatis mutandis*, to other religious communities.

2. The situation of Jewish cemeteries in Europe: an overview

8. In Europe, where the Jewish presence dates back to Roman times, Jewish communities have suffered numerous periods of exclusion and persecution. The majority of the Jewish population was exterminated by the Nazis and their allies during the Second World War and the survivors found themselves scattered across the globe, obliged to leave their cemeteries behind them.

9. Joint efforts to protect and preserve these cemeteries have been made by local and international organisations and by the authorities in eastern Europe and elsewhere. They demonstrate not only a determination to shoulder responsibility but also the wish to foster an awareness of and draw lessons from history and, above all, to help preserve this heritage and pass it on to future generations.

10. Since the fall of communism and the opening of eastern European borders to tourists from the west, eastern Europe has again become a focus of pilgrimage for Jews from all over the globe to visit the places that were home to their forebears and the cemeteries associated with those places. The visitors are the descendants of the deceased, who wish to pray over family graves or the graves of eminent rabbinical authorities of worldwide renown. It is also important to remember the historical contribution made by Jewish communities to creating the social, cultural and economic fabric of Europe.

11. The pilgrims also include non-Jews who wish to connect with history and the legacy of their past. A number of specialist tourist agencies have emerged, helping in parallel to promote the local economy. The construction of protective walls, cemetery maintenance, consultation of local archives and “adoption” of cemeteries by schools are just some of the ways of enhancing this common heritage.

2.1. Description of Jewish burial places

12. In order to describe accurately and understand the significance of Jewish burial places, it is first of all necessary to clarify their status in Jewish law and practice. According to Jewish law, a cemetery, referred to as the “house of the living”, and any Jewish burial place are regarded as holier than the synagogue. Once a grave has been closed, whether an individual tomb or a mass grave, old or recent, it is strictly prohibited to reopen it, even if the intention is to immediately close it again.

13. Jewish tradition dictates the purchase of a grave to ensure its permanence. If there are no heirs, or if the heirs are unable to pay, the grave will be bought with money from the community. The Talmud prohibits any transfer of a grave, and a corpse cannot be moved from the place where it is buried. In the Jewish faith, the soul of the deceased remains in direct contact with the body and does not leave it. The promised resurrection will take place in the body inhabited by the individual at the end of his or her life.

14. Even if the tombstones have been removed from the cemetery, the site retains its holiness and remains sacrosanct. Accordingly, a cemetery with only a few visible tombstones remaining may be a burial place for hundreds of Jews. Moreover, even an isolated grave without a tombstone or any other distinctive marking retains this sanctity.[3]

15. However, the term “burial places” covers more than just cemeteries: in Jewish law and through our duty of remembrance, mass graves must be regarded in the same light as cemeteries.

16. Memorials have been put up at a number of these extermination sites, sometimes above or beside the mass grave itself, or sometimes further away, if the site has become difficult to reach.

17. Nonetheless, it should be remembered that memorials serve, by definition, to perpetuate events in the collective memory, but not necessarily to protect sites steeped in history. Consequently, the exhumation of bodies from a mass grave or tombs in a cemetery to be replaced by a memorial cannot be seen as a form of protection.

2.2. Threats to Jewish burial places

18. The overall situation of Jewish burial places in Europe is alarming. For although there are still traces of former cemeteries in towns and villages that have lost their Jewish populations, their preservation and protection are under constant threat.

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3. Rabbi Elyokim Schlesinger, “The Sacred Obligation of Burial, Life after Death in Jewish Belief”, European Agudas Yisroel, Anvers, October 2008, http://www.uclouvain.be/414716.html.

19. The damage suffered by Jewish cemeteries in Europe is not confined to desecration of graves by anti-Semitic groups or citizens with no sense of civic responsibility. It has a more insidious cause in the wrongful exploitation of old cemeteries abandoned after the Holocaust or the forced departure of the communities that created them. The damage is a result not only of inadequate management of town planning by the public authorities, but also, particularly in central Europe, of various forms of misuse of property and infringements of measures protecting graves.

20. Old cemeteries are often simply destroyed and their land used for the purposes of profit. Unauthorised development, together with hasty and poorly regulated industrial restructuring, has led all the more easily to abuses since the descendants of the deceased are now dispersed far and wide and the remaining local communities are small and lack the necessary financial resources, added to which there is little interest in these old burial grounds, which are wrongly regarded as having nothing to do with cultural heritage.

21. The legal status of these cemeteries may prove to be complex, given the variety of legal situations in which both the burial places and Jewish minorities find themselves. But it may also be the case that this status has simply been disregarded or overlooked following changes in the political system. It is also possible that the desecration of graves associated with spatial planning abuses may be a result of latent anti-Semitism.

22. It can therefore happen that a mere proposal from a property developer can turn a cemetery into a hotel complex. Of course, while this type of obliteration is real enough, we should not underestimate the slow and tranquil erosion of these sites by the passage of time. Moreover, unprotected cemeteries often fall victim to a process of destruction and desecration, with first the disappearance of the tombstones and then the gradual annexation of cemetery land to neighbouring fields for more farmland.

23. In short, a number of factors come into play, but virtually all burial places are threatened to various degrees by one or more of the following:

– erosion over time; growth of vegetation; pollution;

– unchecked access; annexation to neighbouring land; shortcut for road or pedestrian traffic;

– vandalism: many cemeteries suffered damage before and after the Second World War and during the Nazi regime; acts of desecration and anti-Semitism; theft of tombstones and grave robbing; theft of bones and gold teeth;

– inappropriate or inadequate maintenance; lack of resources and legal tools requiring permission from Jewish interested parties before any work on Jewish burial sites; discovery of “non-apparent” Jewish burial sites which “appear” only when exhumation has already begun.

24. Some desecrated Jewish burial sites have been converted to be used for other purposes, such as farming, forestry, commercial or industrial use. They have become residential areas, public gardens, leisure parks, army grounds and storage sites; some have been turned into lakes.

25. Various surveys have provided a picture of the progress made in identifying some of these sites. For example, some have been identified but are not protected; some have been partially demarcated but are not surrounded by a protective wall, nor have their boundaries been clearly defined; some have no *in situ* markings identifying them as Jewish cemeteries; and some mass graves date back to Soviet times and are therefore not identified as Jewish burial places.

2.3. Consequences of desecration

26. The result of such lengthy and irremediable desecration has been the complete disappearance of all traces of a Jewish presence in towns and villages steeped in history, thereby bringing a halt to the passing-on of history to younger generations in these places. From a religious point of view – quite apart from the obliteration of memories, history and cultural heritage – this is an offence to Jewish holy places and the dignity of the dead.

27. This situation has prompted Jewish organisations to co-operate in drawing up a European legislative framework to make European States and central and local government aware of the need for protection and preservation measures which take all these considerations into account.

28. To this end, an in-depth study[4] of international and European legal texts relating to the protection and preservation of Jewish cemeteries has been made by Professor Louis-Léon Christians (University of Louvain-la-Neuve, Belgium).

29. Jewish organisations have set up bodies recognised by Jewish communities in Europe, comprising committed stakeholders and experts in Jewish law on burial places, to provide expertise for the protection of cemeteries and mass graves in Europe. The Committee for the Preservation of Jewish Cemeteries in Europe (CPJCE)[5]and the Agudath Israel Organisation[6]are two examples.

2.4. Examples of management of cemeteries in certain Council of Europe member States

2.4.1. France

30. A Ministerial Circular of 19 February 2008 points out that the law of 14 November 1881, known as the Freedom of Burial Act, established the principle of non-discrimination in cemeteries and abolished the obligation to provide a part of the cemetery, or a specific burial place, for each faith. However, the circular authorises mayors to create faith-specific sections in local cemeteries.

31. French law lays down the principle of granting burial plots, which can be temporary (fifteen, thirty or fifty years) or in perpetuity. If a grave is left untended for a period of thirty years, the mayor can then (following a set procedure) recover the burial plot. However, in cemeteries where burial plots have been recovered, the mayor must issue an order for the creation of an ossuary to accommodate the remains of individuals from the burial plots recovered in this way.

32. These points of French law raise a number of problems.

– The provision of a faith-specific section does not rule out the possibility of a non-Jewish person being buried in this area, which, under Jewish law, would deprive it of its faith-specific nature.

– The individual faith areas are also subject to the principle of burial plot grants, which are limited in time. This means that if a grant is not renewed, the remains must be exhumed.

– The creation of faith-specific sections is solely at the discretion of the mayor. This situation undermines individual freedoms in the field of religious observance, since in heavily populated regions faith-specific sections are becoming increasingly rare.

– The exhumation of the deceased and the placing of their bones with others in an ossuary is contrary to the respect that the Jewish religion accords to the dead.

– It is impossible for any community, whether Jewish or not, to buy land for a cemetery. Accordingly, religious authorities are trapped, because on the one hand they cannot refuse burial in their faith-specific section to a person of a different faith and, on the other, they are unable to buy land for their own purposes.

– Concession rights cannot be transmitted to any community (including the Jewish community) once the concession holders (family of the deceased) are no longer there to renew it or maintain the concession. This situation leads to a termination of concession rights and to numerous exhumations, leaving the Jewish community powerless.

33. A special legal system exists in the regions of Alsace and Moselle. The Jewish cemeteries of Alsace and Moselle are governed, as are all the activities of the consistories of Alsace and Moselle, by the Royal Order of 25 May 1844 organising Jewish worship. What distinguishes these cemeteries is the fact that they are owned by the consistories, unlike elsewhere in France where cemeteries are owned by local councils. Grants of burial plots in these cemeteries are in perpetuity.

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4. “Jewish Cemeteries and Mass Graves in Europe: Protection and Preservation – European and International Law”, European Agudas Yisroel, 2008, http://www.uclouvain.be/414716.html.

5. Based in London, the CPJCE is a European rabbinical authority on Jewish law on burial places that analyses, proposes and monitors protection methods for endangered sites. To perform its task, the CPJCE also calls on the services of a panel of technical experts for each individual case, including historians (for research relating to maps, land registries, original photographs, eyewitness accounts) and environmental geologists (site consolidation). State-of-the-art non-intrusive and non-destructive techniques such as satellite navigation are also used to scan sites without violating their sanctity.

6. Founded in 1912, the Agudath Israel World Organization (AIWO) or Agudath Israel, is a worldwide confederation of Orthodox Jewish communities which has extensive legal and political experience in the fields of human rights (especially freedom of religion), protection and preservation of cultural heritage and education. It has enjoyed consultative status with the United Nations since 1948. In the communist era, Agudath Israel had already, in collaboration with the Polish Government, drawn up an initial list of 1 056 Jewish cemeteries under threat. In the same period, and thanks to diplomatic efforts by the AIWO, Romania strengthened its law on the protection of Jewish holy sites.

34. The organisation of funerals is the responsibility of the consistory, which, because of health and safety regulations, delegates some operations to approved companies. The consistory bears sole responsibility for management of its cemeteries (grants of burial plots, maintenance, etc.).

35. Communities which had cemeteries for their own faith prior to the law of 1905 on the separation of church and state are still in possession of those cemeteries, and they are still used in so far as space remains.

2.4.2. Belgium

36. Belgium does not have many cemeteries, and few of them are old. The State makes "sections" available to the Jewish community, and the latter is responsible for administering them. Maintenance is provided by local councils in most cases.

37. The system of granting burial plots is also used, plots being granted for renewable periods of fifty years. There have been no cases of grants coming to an end, and the Jewish community has been given responsibility for renewals.

38. However, some members of the Jewish community prefer to be buried in the Netherlands, which is not far away geographically and which offers grants in perpetuity. At present the overall situation is not particularly difficult, but the question of time-limited grants will eventually pose problems.

2.4.3. Italy

39. The Jewish community owns cemeteries and faith-specific sections and manages them itself. Nevertheless, disrepair and a serious need for maintenance and greater security have been noted.

2.4.4. Poland

40. The rabbinate of Poland is responsible for its cemeteries with the aid of the Foundation for the Preservation of Jewish Heritage in Poland. The government also provides assistance to the community.

41. This situation does not prevent disrepair or indeed the virtual disappearance of cemeteries in small towns and villages. For example, on 10 May 2011 the cemetery in the town of Neswige became a park and a right of way for residents.

2.4.5. Ukraine

42. A problem has emerged in Bobganiwka (province of Nikolayev), where the cemetery is on the edge of the former Jewish *kolkhoz* (or collective farm). During the war, Jews were shot and thrown into a mass grave dug in the cemetery, but now it has been found that there are five non-Jewish graves there. Moreover, the cemetery is under growing threat from the increasing ground subsidence caused by the digging of a sand pit next to it.

3. Case studies

43. It would be helpful to study some specific cases from recent years in order to identify good and bad practices.

3.1. Good practice for protection of Jewish burial places

3.1.1. Stuttgart (Germany) – US army airfield, 2005

44. A mass grave of Holocaust victims (36 bodies) was discovered during reconditioning of a road next to a military runway used by the US Air Force.

45. Despite the historical evidence provided, it took lengthy international negotiations, including intercession by the Agudath Israel Organization with the relevant authorities at the Pentagon, for the authorities to be persuaded that the bones were indeed those of Nazi victims. CPJCE representatives were obliged to bring a surviving witness of the period to the scene. A specialist was brought in to "rearrange" the bones, which had been all placed together, unsorted, in plastic bags, in order to reconstitute the skeletons.

Tribute must be paid to the co-operation from the local and military authorities, which then gave the CPJCE permission to rebury the bodies in coffins in the same place where they had been discovered in order to observe religious precepts. An agreement was reached to preserve and protect the site.

46. Various parties were involved in settling this problem: the CPJCE provided its expertise in body identification and rabbinical law, while Agudath Israel led the political approaches to the Pentagon and demonstrated its diplomatic abilities in making the highest authorities aware of how serious the matter was in human and religious terms.

3.1.2. Toledo (Spain) – land belonging to the Azarquiel school, 2009

47. Following the expulsion of the Jews from Spain in 1492, the old historical cemetery in Toledo was destroyed. Its site was still known, however. During building work at the Azarquiel school, Jewish graves were uncovered.

48. The CPJCE spent considerable energy enlisting the Federation of Jewish Communities in Spain and various rabbinical organisations (Conference of European Rabbis and the Spanish Rabbinical Council) in order to find a solution together with the government authorities.

49. The case was very complicated because of the stage reached in the building work, the need to change the original plans and the time required for consulting Jewish organisations and obtaining rabbinical opinions.

50. The accepted compromise was a partial amendment of the original building plan.

51. This was a very significant and valuable experience. The Spanish Government showed a strong commitment to taking account of the religious aspects of the matter in seeking a solution.

3.1.3. Belzec concentration camp (Poland) – government land, 2001-04

52. Belzec concentration camp in the south-east of Poland was built by the Nazis in late 1941. It was the first camp to use gas chambers. Between February and December 1942, hundreds of thousands of Jews and Roma were killed and thrown into mass graves. At the end of the war, seeking to remove evidence of their crimes, the Nazis opened up the graves in order to burn the human remains, then scattered the ashes and planted trees over the graves to disguise the scene. There is a painting of the time showing these events.

53. When the war ended, the site was neglected for various reasons, which resulted in serious damage, with bones becoming visible whenever there was heavy rainfall. Once informed of this, Jewish organisations and the Union of Jewish Communities in Poland undertook restoration work.

54. The American Jewish Committee provided funding for land consolidation and the memorial.

55. The CPJCE also played a key role in this work, amongst other things by carrying out a meticulous inspection of the site using satellite navigation technology to confirm the number and location of mass graves. A change was made to the plan for the memorial in order to take account of the CPJCE's findings.

3.1.4. Vilnius (Lithuania) – government land, 2001-04

56. The large historic Jewish cemetery in Vilnius was destroyed under the Nazi and communist regimes. All the tombstones were removed and were often used for domestic buildings. A sports complex was built on part of the cemetery. In recent years, Vilnius City Council drew up a property development plan for the cemetery site, and unfortunately a number of buildings have already been constructed. The desecration of the site led to massive protests worldwide. Agudath Israel and the CPJCE worked at diplomatic level to find a way out of the crisis. The Lithuanian government invited the interested parties to come to Vilnius to investigate and begin talks.

57. After lengthy negotiations, an agreement was reached to protect the cemetery, including a pledge given by the government to prohibit any further building anywhere on the cemetery and official recognition of the cemetery as a historical site.

58. Europe was a major centre of Judaism from the 17th to the 20th century; it is therefore extremely important for this heritage to be respected and protected.

3.1.5. Mass graves in Ukraine

59. “Yahad-In Unum” is the main association investigating the mass executions that resulted in the extermination of one and a half million Jews and Roma in eastern Europe between 1941 and 1944. While the atrocities committed in the concentration camps are well known, this is not the case for the genocide of Jews and other victims of the Nazis and their allies perpetrated in the former Soviet Union.

60. Through its investigations, Yahad-In Unum has discovered hundreds of mass graves of victims killed in eastern Europe and has recorded statements from over 1 850 witnesses. This unique database is now of particular importance to Jewish organisations in Europe.

61. In 2011, a co-operation agreement was signed between Yahad-In Unum, the CPJCE and the American Jewish Committee.

62. What is special about this unprecedented co-operation is that it combines different skills for a single purpose: protecting cemeteries and sites of execution. Yahad-In Unum contributes its field expertise in the form of investigation reports and satellite navigation data. These provide accurate information on the circumstances of executions and the precise location of mass graves. The CPJCE is the official rabbinical body authorised to oversee protection methods and procedures for these sites. The American Jewish Committee plays a key part in co-ordinating the work. This is in partnership with the German Government, which has undertaken to provide several tens of millions of euros to finance the work of protecting mass graves.

63. This co-operation agreement is at present focusing on the protection of five pilot sites in Ukraine. The agreement seeks to clarify working standards for each of the organisations in order to capitalise on the best from the fields of rabbinical law (CPJCE) and historical information (Yahad – In Unum), with an international co-ordinating body (American Jewish Committee).

64. The various cases cited above demonstrate that a basic precondition for any agreement is recognition by the authorities of a site’s historical nature and the fact that it forms part of the heritage. This not only paves the way for negotiation but is also a sign of commitment to the next crucial next step: the quest for a genuine solution.

65. It is also important to acknowledge the religious dimension in everything relating to Jewish heritage and especially burial places. Rabbinical law is very intricate and calls for international expertise and credibility. It is therefore essential to act in consultation and extremely close co-operation with the appropriate European authority in this field, the CPJCE and Agudath Israel.

3.1.6. Ennezat (Auvergne, France) – medieval Jewish cemetery

66. The aim of the Paris-based Association for the Protection of French and European Jewish Heritage (Sauvegarde du patrimoine juif français et européen, SPJFE) is to help preserve monuments of historical and cultural interest for the history of Judaism in France and in Europe. One of its projects is to protect and restore the Jewish cemetery in Ennezat (Auvergne), known for several centuries as “the Jews’ field”.

67. This cemetery dates from the 13th century and by the 15th century contained a total of 700 graves. The site is remarkable in Europe for the number and homogeneity of the graves.

68. In 1992, salvage excavations were undertaken by France’s National Institute for Preventive Archaeological Research (Institut national de recherches archéologiques préventives, INRAP). The land covering the graves belonged to private owners. The SPJFE, supported by the Fondation Matanel, became involved in the project in late 2008.

69. In June 2009, the site was listed as a historical monument. A project team was put together with an architect as project leader. A steering committee was set up with the mayor, the Auvergne Regional Director for Cultural Affairs, the Auvergne Cultural Heritage Officer and representatives of central and local government. The SPJFE purchased the land (9 600 m^2).

70. A restoration project is in preparation, comprising a meditation park with a history and remembrance trail and a museum with replicas of gravestones and facsimiles of known records and studies. It will be submitted to local and central government in early 2012 for funding. Maintenance and security for the restored site will be provided by the local council and will be covered by a long lease.

3.1.7. Bosnia and Herzegovina – old Jewish cemeteries in Sarajevo, Bihać and Travnik

71. The old Jewish cemetery in Sarajevo is one of the largest Jewish burial sites in Europe and is of outstanding value. It records certain features of the life of the Sephardim community since their expulsion from the Iberian peninsula in the 16th century, and later of the Ashkenazi community. In addition, the cemetery reflects the development of the city of Sarajevo over the centuries. The Sephardim created their own unique style of tombstone which in their house-like shape, artistic treatment and polysemic symbolic motifs, resemble no other Jewish tombstones elsewhere in the world. There are more than 3 850 tombstones with four memorials erected to the victims of fascism and several cenotaphs in a total area of 31 160 m2. This cemetery was on the frontline during the 1992-1995 war in Bosnia and Herzegovina and suffered important damage. The main threat to the cemetery today is landslide which is causing entire graves and their tombstones to shift. About 95% of the tombstones are estimated to be damaged. The entire burial complex has been neglected and is overgrown.[7]

72. The Government of the Federation of Bosnia and Herzegovina is responsible for ensuring and providing measures necessary to protect, conserve, display and rehabilitate this national monument. With the approval of the Federal Ministry responsible for regional planning and under the expert supervision of the heritage protection authority, initial measures have been taken to protect the site and to prevent further damage: a protection zone has been established consisting of a 20m strip outside the cemetery walls, a drainage system has been completed around the main chapel during restoration work to stabilise it structurally, illegal construction in the surrounding area has been strictly prohibited. However, funding is pending to complete the work to secure and stabilise the entire burial site, namely to complete the draining system to remove groundwater from the entire site and to build structural elements to stabilise the slope. Once this is completed, additional funds will need to be raised to undertake restoration of severely damaged tombstones, monuments, walls, gates and pathways.[8]

73. The Jewish cemetery in Bihać was founded in 1875. Since 1937, the Jewish community has collected funds from its members and built a 2m high fence around the burial site with a gate on its north side. Monuments were destroyed and the fence was damaged in the Second World War. Reconstruction of the fence and the gate has recently started, but the cemetery remains unsafe and the construction has not been completed due to insufficient funds. The restoration project has been developed, but an additional €75 000 are needed to complete it.

74. The oldest monuments in the Jewish cemetery of Travnik date back to 1762. The Jewish community in Travnik regularly maintained and preserved the cemetery until 1941. It was then completely abandoned after many Jews were taken to concentration camps. A few returned after the Second World War, but there were no Jewish families originating from Travnik left after 1951. With the contribution of the Federation of Jewish Communities in Yugoslavia, the cemetery was at one point fenced with a simple wooden railing which did not last for long. The cemetery is at present in very bad condition, even though it is of exceptional heritage value. The municipality of Travnik and the Jewish community of Bosnia and Herzegovina have the intention of requesting that this cemetery be granted national monument status in order to preserve it from further decay.

3.2. Examples of difficult cases

75. Unfortunately, European experience is not confined to good practice; Jewish organisations in Europe sometimes come up against indifference and deliberate desecration of Jewish burial places.

3.2.1. Grodno (Belarus) – football stadium belonging to the Neman Football Club, 2003

76. In 1968, the land of the Jewish cemetery (the final resting place of a number of major figures of Judaism, such as Rabbi Alexander Ziskind, who died in 1794) was seized by the communist government and a stadium was built on it. In May 2003, the Grodno authorities authorised an extension to the Neman football stadium on the site of the Jewish cemetery. During levelling of the foundations, the authorities were unperturbed by the uncovering of graves; human remains were dug up and desecrated, and lorries were filled with bones. Yet this project had the support of the International Olympic Committee.

7. See “Jewish cemetery – Sarajevo, Bosnia and Herzegovina”, Preliminary technical assessment of the architectural and archaeological heritage in south-east Europe by the Commission to Preserve National Monuments, Sarajevo.
8. *Ibid*.

77. The CPJCE, the Jewish community in Belarus, the Conference of European Rabbis, the American Chairman of the Commission for the Preservation of America's Heritage Abroad, the European Parliament and several diplomatic missions in Belarus began to take action.

78. Meetings with a large number of representatives of the Belarus government had no effect; the assurances given by central government concerning protection of the cemetery were just empty words.

79. Despite a visit to Grodno by a delegation from the European Parliament, intervention by the British Foreign Office and French, German and Polish diplomats, as well as public protests at Belarusian embassies in London and Brussels, nothing was achieved.

3.2.2. Metz (France), 2003

80. The Jewish community in Metz used to be one of the most distinguished in Europe. The old historic Jewish cemetery was on the Avenue de Blida and contained several hundred graves. Today the site is a car park.

81. It seems that at the time of the German occupation a section of the cemetery was dug up. However, research carried out in conjunction with the Préfecture of Metz in November 2005 using ground-penetrating radar and non-intrusive soil scanning technology confirmed that, despite the absence of tombstones, the remains of a cemetery have been found.

82. Use of this area as a car park therefore constituted a desecration of the site. Following numerous political and diplomatic appeals, it was agreed by the Préfecture that the site would be recognised as a Jewish cemetery and a replacement location for the car park would be found by the city council. Implementation of this decision is still pending.

4. Protection and preservation of Jewish cemeteries

83. The question of protection and preservation of Jewish cemeteries shall be considered from two standpoints: that of defending fundamental rights enshrined in the European Convention on Human Rights (ETS No. 5, "the Convention") and that of preserving Europe's common cultural heritage.

4.1. Aspects relating to human rights

84. The following fundamental rights embodied in the Convention may apply to the protection and preservation of Jewish cemeteries and burial sites:

– Article 8 – Right to respect for private and family life: "Everyone has the right to respect for his private and family life, his home and his correspondence", which has been interpreted by the European Court of Human Rights as extending, in certain cases, to the relationship of family members with a deceased parent.

85. The right to rest in peace, interpreted as a right to privacy, has been only admitted by the European Court of Human Rights as a right to be relied upon by individuals who are alive. There seems to be no direct right to private life for the deceased that would guarantee the right to rest in peace. However, the protection of the right to private and family life of the living applicants could be envisaged within their relation with the deceased.

– Article 9 – Freedom of thought, conscience and religion: "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance."

86. Article 9 involves protection for an individual's core belief and for the right to manifest such beliefs either individually or with others, and both in private and in the public sphere. The case law clarifies that State authorities may not only be required to refrain from taking action which would interfere with thought, conscience and religion, but also in certain circumstances to take positive measures to nurture and to protect these rights.

87. In his "Human rights comment" of 30 November 2010,[9] the Council of Europe Commissioner for Human Rights stated that: "The European Convention on Human Rights protects the right to freedom of thought, conscience and religion. This right encompasses the protection of religious buildings and sites from unlawful damage. However, some national authorities see these acts as 'low social harms' that need not receive priority in terms of investigation and prosecution. This is a wrong choice."

– Article 1 of the 1952 Protocol to the Convention (ETS No. 9) – Protection of property: "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law."

88. Most Jewish cemeteries enjoy the status of private property. Therefore, jurisprudence on expropriations are pertinent to oppose certain spoliations or misuses. Permanent plots in public cemeteries should enjoy a similar status.

89. The rapporteur considers that there should be a responsibility to protect human dignity in the broader sense by preserving deceased persons in their place of burial and to respect their religion by ensuring that they are preserved in a manner compatible with their religious practice. The question of individuals' and communities' right of access to these cemeteries, together with that of ownership, must also take account of these fundamental rights, while bearing in mind differences between cemeteries still in use, those that are not used but are protected and those that have been abandoned.

4.2. Aspects relating to the preservation and protection of the European heritage

4.2.1. The Faro Convention

90. The Council of Europe Framework Convention on the Value of Cultural Heritage for Society which came into force in June 2011, arose from the desire to provide a framework of reference for heritage policies and to draw on the positive benefits which can be derived from the use of the heritage as cultural capital and as a development resource. Moreover, the European cultural heritage is seen as a primary resource for a democratic engagement in support of cultural diversity.

91. The convention recognises the need to put people and human values at the centre of an enlarged and cross-disciplinary concept of cultural heritage. Furthermore, it promotes the concept of a common European heritage by asserting the principle of every person's right of access to the cultural heritage of his or her choice, while respecting the rights and freedoms of others. The convention therefore establishes an important link between the protection of fundamental rights and heritage protection. The following articles could be particularly relevant to the protection of Jewish cemeteries.

92. A "heritage community" is defined in Article 2.*b* as consisting "of people who value specific aspects of cultural heritage which they wish, within the framework of public action, to sustain and transmit to future generations".

93. Article 3.*a* states, *inter alia*, the need to promote all forms of cultural heritage in Europe which together constitute "a shared source of remembrance, understanding, identity, cohesion and creativity".

94. In support of building tolerance, respect and mutual understanding, Article 4.*b* states that "everyone, alone or collectively, has the responsibility to respect the cultural heritage of others as much as their own heritage", thus upholding the concepts of "common heritage of Europe" and "common responsibility".

95. The convention also promotes respect for integrity of the cultural heritage by asking States parties to ensure that decisions about change include "an understanding of the cultural values involved" (Article 9.*a*), and that "general technical regulations take account of the specific conservation requirements of cultural heritage" (Article 9.*c*).

96. The convention's approach to procedures is also innovative, requiring States to "take into consideration the value attached by each heritage community to the cultural heritage with which it identifies" (Article 12.*b*) and to "develop legal, financial and professional frameworks to make possible joint action between public authorities, experts, owners, investors, businesses, non-governmental organisations and civil society" (Article 11.*b*).

9. "Desecrations of cemeteries are hate crimes that exacerbate intolerance".

97. The provisions of the Faro Convention therefore provide an excellent and innovative guidance to the member States and also to numerous “heritage communities”, including the Jewish communities, in their quest to preserve their specific cultural heritage, and with it their cultural identity and history.

4.2.2. The Enlarged Partial Agreement on Cultural Routes

98. A European Route of Jewish Heritage was established in 2005 under the auspices of the Council of Europe Enlarged Partial Agreement on Cultural Routes.

99. This route intends to make European citizens aware of the cultural richness brought by the Jewish people to many different regions of Europe. The project aims to preserve and enhance part of the European cultural heritage that the Jewish sites represent (synagogues, cemeteries, *mikve*, etc.). It also draws on the historical evidence of cultural exchange with diverse societies the Jewish communities lived in, as reflected in different architectural styles of synagogues, the use of different languages such as Yiddish and Ladino, etc.

100. The route, stretching from Dublin to Ankara and from Helsinki to Malta, with a strong focus on eastern and central European countries, should contribute to the spiritual and historical restoration of destroyed Jewish communities and to enhanced knowledge about Europe’s history. The route not only enables visitors to discover the history of the Jewish people but also enables them to gain a better knowledge of their local and national history.

5. Conclusions

101. There are numerous Jewish cemeteries in Europe and they need to be protected and preserved. They are part of the European cultural heritage and constitute an important element of the Jewish religion. These cemeteries are probably more at risk than those of other confessions in Europe, on account of the Jewish people’s tragic history which led to the extermination, exodus or resettlement of many local communities. Governments, members of Jewish communities and heritage organisations have a responsibility to develop appropriate forms of co-operation to ensure their protection.

102. The Faro Convention provides timely and innovative guidance. It provides an open definition of heritage that, without excluding the exceptional, particularly embraces the commonplace heritage and the value attached to it by the specific heritage communities and/or society at large. It addresses the right to cultural heritage – seen as an integral part of the right to participate in the cultural life of the community and the right to education – and generates the idea of a “common European responsibility” towards cultural heritage. In this respect, the Faro Convention also provides practical guidance for the organisation of public responsibilities to preserve and enhance cultural heritage and for the processes of democratic participation.

103. The ratification of the Faro Convention by more member States would facilitate the development of a cross-disciplinary approach to dealing with cultural heritage, and setting up appropriate participatory mechanisms to implement such policies. These policies should also include the preservation of cemeteries and places of burial.

104. The European Route of Jewish Heritage could help raise public awareness of the Jewish culture and history and it could provide concrete opportunities and incentives for the protection and preservation of Jewish heritage sites, including cemeteries and mass graves.

105. The Parliamentary Assembly could also recommend drafting specific guidelines for the protection and conservation of existing types of Jewish and other religious communities’ cemeteries (namely Christian and Muslim cemeteries in south-eastern Europe – countries of the former Yugoslavia, Turkey, Greece, Cyprus – and the Caucasus countries), in accordance with both religious practices and heritage conservation principles.

106. The guidelines could address specific issues of relevance to different types of heritage, such as: cemeteries of historic importance which are part of the “listed” cultural heritage; cemeteries of victims of wars or terror (including mass graves); tombs of religious leaders and other dignitaries; anonymous graves; religious buildings such as synagogues, tomb stones and other religious objects which form part of a given burial site. Specific consideration should also be given to the current state of heritage, whether it is abandoned, transformed or in use. Moreover, the guidelines should include material preservation and renovation; historic preservation through gathering of historic data in museums, archives and on websites; and religious preservation through strict respect of religious requirements.

107. Bearing in mind the contribution made by Jewish communities to the social, cultural and economic fabric of Europe throughout history, special attention should be given to education and awareness-raising initiatives that promote knowledge of local history and local cultural heritage; stress the urgent need to protect and preserve burial sites in danger of desecration; damage or disappearance; and offer visibility to burial sites, by means of virtual libraries with maps, photographs and testimonies. In addition, there is a need to encourage pilot projects involving schools and local associations in building protective walls, taking part in cemetery maintenance, consulting local archives, "adopting" cemeteries, etc.

108. Member States should be also invited to address a number of legal, technical and management issues of direct relevance to local stakeholders engaged in the protection and conservation of heritage sites, such as: partnership mechanisms, property issues, town planning, specific conservation requirements, effective control over local development projects, developing programmes to locate burial sites, using non-invasive technical devices (such as ground-penetrating radar), facilitating technical investigations and identification, regulating access to burial sites, etc.

109. Co-operation with the European Union and other institutions could be sought in this area. In Kosovo,[10] for example, the Council of Europe offers assistance to improve legal frameworks and practical mechanisms that protect and promote heritage. Since 2004, these activities have been managed as a joint programme with the European Union "European Union/Council of Europe Support to the Promotion of Cultural Diversity in Kosovo" through the Reconstruction Implementation Commission (RIC). This specific project aims at increasing cultural heritage rehabilitation activities with all relevant institutions, using cultural heritage as a tool for reconciliation and dialogue between communities.

10. All references to Kosovo in this text, whether to the territory, institutions or population, shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

Appendix – Number of known Jewish cemeteries and mass graves in Council of Europe member States

Council of Europe member States	Number of Jewish cemeteries	Number of Jewish mass graves
Albania	8	
Andorra	0	
Armenia	5	
Austria	67	
Azerbaijan		
Belgium	10	
Bosnia and Herzegovina	36	
Bulgaria	32	
Croatia	67	
Cyprus	2	
Czech Republic	1 142	
Denmark	16	
Estonia	11	17
Finland	4	
France	409	
Georgia	4	
Germany	2 319	82
Greece	31	
Hungary	1 300	
Iceland	0	
Ireland	5	
Italy	66	
Latvia	84	200
Liechtenstein	0	
Lithuania	245	196
Luxembourg	5	
“The former Yugoslav Republic of Macedonia”	5	
Malta	6	
Republic of Moldova	41	60
Monaco	1	
Montenegro	2	
Netherlands	230	
Norway	2	
Poland	1 272	182
Portugal	13	
Romania	870	?
Russian Federation	105	17
San Marino	0	
Serbia	103	
Slovak Republic	415	
Slovenia	13	
Spain	26	
Sweden	6	
Switzerland	28	
Turkey	50	
Ukraine	895	905
United Kingdom	196	

Council of Europe member States	Number of Jewish cemeteries	Number of Jewish mass graves
Belarus (non-member State)	*382*	*200*

Sources of statistical information:

Foundation for the Preservation of Jewish Heritage in Poland, annual report, 2005, p. 6

Lo Tishkach: Internet database, accessed on 8 March 2011

Reports of the US Commission for the Preservation of America's Heritage Abroad

International Jewish Cemeteries Project, database, accessed on March 2011, http://www.iajgsjewishcemeteryproject.org/