IN THE CONSISTORY COURT OF THE DIOCESE OF OXFORD

IN RE THE ROYAL BURIAL GROUND, FROGMORE, WINDSOR

IN RE THE EXHUMATION OF HER MAJESTY QUEEN MARIA OF YUGOSLAVIA

JUDGMENT

1. On the 8th September 2012 the Government of the Republic of Serbia adopted a decision on the establishment of the Organizing Committee for the Exhumation and Transfer of Mortal Remains of the members of the Royal House of Karadjordjevich to the family crypt in St George's Church, Oplenac, in the city of Topola, Serbia. The chairman of that Committee is the President of the Republic of Serbia, Tomislav Nikolic; the vice-chairmen are the Prime Minister, Ivaca Dacic, the First Deputy Prime Minister, Aleksander Vucic, and the Deputy Prime Minister, Jovan Krkobacic. Pursuant to this decision the Ambassador of the Embassy of the Republic of Serbia petitioned the Consistory Court of the Diocese of Oxford for permission to exhume the mortal remains of Her Majesty Queen Maria of Yugoslavia (otherwise known as Marie Karadjordjevich) so that they may be re-interred in St George's Church with the remains of other members of the Royal House of Karadjordjevich. She died in England and her remains had been buried in the Royal Burial Ground at Frogmore, Windsor, on the 22nd June 1961.

2. The consent of Her Majesty Queen Elizabeth II has been given to the exhumation as has that of His Royal Highness Crown Prince Alexander of Yugoslavia and the other surviving relatives of the deceased. In addition the Dean of Windsor, the Right Reverend David Conner KCVO, has expressed his agreement to the proposed disinterment. Public notice of the petition has therefore been dispensed with pursuant to rule 13(9)(a) of the Faculty Jurisdiction Rules 2000.

3. Section 25 of the Burial Act 1857 provides that _

> "Except in the cases where a body is removed from one consecrated place of burial to another by faculty granted by the ordinary for that purpose, it shall not be lawful to remove any body, or the remains of any body, which may

> have been interred in any place of burial, without licence under the hand of one of Her Majesty's Principal Secretaries of State, and with such precautions as such Secretary of State may prescribe as the condition of such licence ....”

Although St George’s Church has no doubt been consecrated according to the Orthodox rites such consecration is not the same as the consecration required by the Burial Act 1857. The required consecration is, of course, that under the laws ecclesiastical of England: see *Re Talbot* [1901] P 1. In that case the diocesan chancellor, Dr Tristram, said (at pages 5-6):

> “In this case a very important question of practice has been raised. I am asked by the petitioner to grant a faculty for the removal of the remains of the deceased from the consecrated place of burial where they are now interred to ground which is not consecrated in the sense in which the law understands consecration. I have not been able to find any precedent prior to the date of the passing of the Burial Act, 1857, of any Ecclesiastical Court having granted a faculty for the removal of remains from consecrated to unconsecrated ground, although it is clear that up to the date of that Act the Ecclesiastical Courts were not precluded from granting such a faculty either by canon or by statute law. The practice of the Ecclesiastical Courts, however, previous to the passing of this Act, was to decline to grant a faculty authorizing remains buried in consecrated ground to be reinterred in unconsecrated ground, as by so doing they would be sanctioning the removal of remains from a place of burial under the special protection of the Ecclesiastical Courts to a place of interment under the protection of no Court _ provided the remains when placed there were not treated either with indignity or so as to create a nuisance .... Such being the state of the law prior to 1857 as to the protection of bodies buried in unconsecrated ground, s. 25 of the Burial Act of 1857 placed for the first time bodies buried in unconsecrated ground under the protection of the statute law of this country .... The ground on which the Court would formerly have refused to grant the faculty prayed for in this case having thus been removed, the Court, having regard to the circumstances of the case, has come to the conclusion that in the exercise of its discretion it ought to grant the faculty, but being of opinion that the words of the above section, "except in the cases where a body is removed from one consecrated place of burial to another by faculty," must be construed as having reference to removal from

> one consecrated place of burial in England (to which country the Act only applies) to another consecrated place of burial in this country, it directs the faculty to issue upon condition that it is not to be acted upon until a licence has been obtained from the Home Secretary under the above section approving of the place of re-interment."

4. For the reasons set out by Dr Tristram the remains of Queen Maria are in law to be regarded as being transferred from one place consecrated according to the laws of England to another place which is not so consecrated. Moreover, as Dr Tristram points out, the Burial Act 1857 only applies to this country. Nonetheless, it is the removal of the body _ that is, its exhumation (from a burial place in England) _ which requires the licence of the Secretary of State rather than its re-interment (which may, of course, be in a country to which the laws of England do not apply). A licence from the Secretary of State is therefore required in the present case and this was granted on behalf of the Secretary of State for Justice on the 11th April 2013. The licence specifically requires that the remains "be transported to the Republic of Serbia to be re-interred in the Oplenac Royal Mausoleum".

5. However, even when a licence has been granted, the provisions of the ecclesiastical law (being as much the law of the land as any other part of the law: see *Edes v Bishop of Oxford* (1667) Vaugh 18 at page 21; *Mackonochie v Lord Penzance* (1881) 6 App Cas 424 at page 446) must still be applied. That law is set out in the well-known case of *Re Blagdon Cemetery* [2002] Fam 299 where the Court of Arches said (at page 310-311):

> "[Family graves] are to be encouraged. They express family unity and they are environmentally friendly in demonstrating an economical use of land for burials. Normally the burial of family members in the family grave occurs immediately following the death of the particular member of the family, whereas in this case [the] remains will have to be disturbed after many years in order to inter them in a new family grave. Notwithstanding this, we have concluded that there are special factors in this case which make it an exception to the norm of permanence which we have explained earlier in this judgment.

> Faculties have been granted in the past for the bringing together, or accumulation, of family members in a single grave after many years provided special reasons were put forward for the lapse of time since the date of burial. Mr Hill drew our attention to a decision of Newsom QC Ch in *In re St James's Churchyard, Hampton Hill* (1982) 4 Consistory and Commissary Court Cases, case 25 where he granted a faculty over 50 years after the death for remains to be exhumed and transported to Canada to be reburied in a family plot in Woodstock, Ontario.... We, therefore, allow this appeal. In doing so it should not be assumed that whenever the possibility of a family grave is raised a petition for a faculty for exhumation will automatically be granted. As in this case it is to be expected that a husband and wife will make provision in advance by way of acquisition of a double grave space if they wish to be buried together. Where special circumstances are relied upon in respect of a child who has predeceased his or her parents, it will be insufficient if there is simply a possibility of establishing a family grave. As in this case there would have to be clear evidence as to the existence of the legal right to such a grave if no family member was already buried in it."

6. In the present case Queen Maria's remains have been buried in the Royal Burial Ground here in England since 1961 but it has not been possible for a petition for exhumation to be lodged at an earlier date as the family had necessarily to await a favourable decision by the Government of Serbia. Happily that decision has now been made. Moreover, it seems to me that there are very special reasons why her remains should be re-interred in the royal mausoleum as may be inferred from the fact that the decision to seek exhumation was made by the Government of the Republic of Serbia itself. Indeed, in my view there cannot be a better example than here of the exercise of the comity of nations relied upon by my predecessor, Chancellor Boydell, in the case of *In re St Mary the Virgin, Hurley* [2001] WLR 831. In addition it is difficult to imagine a better example of a family grave than a royal mausoleum.

7. As has been seen in the case of *Re Talbot* Dr Tristram stated (at page 5):

> "The practice of the Ecclesiastical Courts, however, previous to the passing of this Act, was to decline to grant a faculty authorizing remains buried in

> consecrated ground to be reinterred in unconsecrated ground, as by so doing they would be sanctioning the removal of remains from a place of burial under the special protection of the Ecclesiastical Courts to a place of interment under the protection of no Court _ provided the remains when placed there were not treated either with indignity or so as to create a nuisance."

The meaning of this passage is not entirely clear but nevertheless it is entirely clear that the jurisdiction of the consistory court should not be exercised save where it is satisfied that the remains will be treated, and continue to be treated, with reverence and dignity. In addition, just as "the special protection" of the ecclesiastical courts demands that the human remains will not be disturbed save in exceptional circumstances, this court should not permit an exhumation unless it is satisfied that those remains will thereafter be interred, or preserved, in a place of real permanence. In the present case I am satisfied that all these requirements will be more than adequately met by the re-interment in the royal mausoleum.

8. In these circumstances I have already directed that a faculty for the disinterment may be issued by the diocesan registry but I felt it was necessary to reserve judgment so that the legal reasons for that decision might be properly set out. It only remains for me to express my thanks to Mr David Cheetham, M.B.E., the solicitor for the petitioner, for the exemplary way in which he has presented the petition in an extremely unusual case.

Chancellor of the Diocese of Oxford

24th April 2013