



COMPLAINT

The foundation The Unigrig Foundation

Representative: Lawyer Camilla Waldenberg

COUNTERPART

The County Administrative Board in Västra Götaland County

APPEAL AGAINST A DECISION

Administrative Court in Gothenburg judgment of 14 February 2022 in case no. 9054-21, see appendix A

THE CASE

Registration of foundation

DECISION OF THE COURT OF COURT

The Court of Appeal changes the decisions of the sub-instances and decides that

The foundation The Unigrig Foundation must be registered in the foundation register.

REQUESTS ETC

The foundation The Unigrig Foundation requests that registration be done in foundation the registry.

The County Administrative Board considers that the appeal should be rejected.

The foundation The Unigrig Foundation

In assessing the duration requirement, the administrative court has not taken

any consideration for the fact that the foundation has been run on a non-profit basis for several years as a blockchain

project and that no direct costs have yet been incurred. The assessment of

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Monday – Friday
08:00–16:00

the duration requirement must of course be forward-looking, but then you have to also see to what is actually needed for the foundation to be able to fulfill its mission specified purposes. The foundation document states that the purpose, for example, can be supported by supporting the operation of the network and supporting development. Nowhere does it appear that this is associated with significant costs. The costs that may arise are very small in relation to the foundation capital that existed at the time of formation.

Even if the assessment of the duration requirement must take place from the outside the time of formation, one must see how the development of the placed the capital has been. You then get into the question of placement of the assets and volatility referred to by the Administrative Court. The crypto asset, UGD, which constitutes the founding capital has had a large number buyers and these have, on the basis of market principles, bought the assets in an open market. UGD has been sold for several million Swedish kronor since November 2021 and sales still continue to several larger ones international companies. Currently, the foundation capital has a value of more than SEK 1 million. This contradicts the reasoning of the sub-instances, i.e. that it is not a safe location.

The foundation's crypto asset is a token/asset that is tied to the speci fika network and which are not affected in the same way by the fluctuations that the cryptocurrency market is experiencing, which in and of itself often coincides with fluctuations in more traditional markets such as the stock exchange. UGD is for present according to the definitions found in the European Parliament and the Council regulation on markets for cryptoassets and amending directives (EU) 2019/1937, a utility token (utility token), i.e. a token relating to the operation of a digital platform, not a crypto asset based on it traded on speculation.

Tokens and crypto assets are a relatively new asset class. It means not that you can dismiss it as an asset and not sound forward thinking

foundations act in the same market as foundations in the same industry i
the rest of the world. There have already been sufficient assets from the beginning
in order to secure the foundation's operations for several years, this has been shown i.a.
in that the foundation has conducted similar activities on a non-profit basis since 2018
without significant costs.

County Administrative Board

The duration requirement must be assessed based on the property that is separated at
the formation and without regard to any commitments regarding future additions.

Because crypto-assets are very price volatile and cannot maintain one
stable value did not meet Foundation The Unigrig Foundation foundation
the law's requirement of duration to further the stated purpose.

The Financial Supervisory Authority has in the supervisory report "Financial instruments med
crypto assets as underlying asset" concluded that financial
instruments linked to crypto assets are more risky than many others
high-risk products, such as derivatives. It is because crypto assets
lacks an intrinsic value and because there is no generally accepted to
reliable valuation models. Simply separating crypto assets satisfies
not the requirement of duration to further the purpose of the foundation.

REASONS FOR THE COURT OF COURT'S DECISION

The question in the case is whether the county administrative board with the support of cited circumstances
has had the right to refuse to register The Unigrig Foundation in the county
the board's foundation register. The County Administrative Board has thereby invoked partly that its own
the judgment separated are cryptoassets which, due to their high
volatility, does not have such a value that the property can be managed
permanently. For the same reason, the county administrative board believes that the fortune does not
is placed in an acceptable manner through the holding of the crypto-assets.

The question of the detailed conditions for refusing registration of a notification according to the Foundations Act (1994:1220) has been developed by the Supreme Administrative Court in the decision HFD 2018 ref. 52. The court pronounces in av the fact that registrations in the county board's foundation register lack constitutive powers meaning and only aims to give publicity to the foundations. According to them chair, the county administrative board should not make a more qualified assessment of whether a foundation exists or not. Instead, the county administrative board should assume that which has been notified for registration is a foundation. If, however, forward will circumstances that give reason to question whether a valid foundation formation exists, an in-depth investigation should be carried out. The test should in such cases limit itself to the minimum requirements for a valid foundation formation are fulfilled, i.e. if it is possible to identify a purpose and a for purpose-separated assets that meet the duration requirement in ch. 1. Section 2 of the Foundation Act. The County Administrative Board may, after such an examination, refuse registration first if it is obvious that what has been notified for registration is not a foundation.

The relevant circumstances for the current case appear from the notification and documents attached thereto. What was notified, The Unigrind Foundation Foundation, according to the foundation deed referred to, aims to develop and promote the continuous development of an Internet-based, redundant, anonymous and decentralized network. According to the memorandum of association of 19 May In 2021, the founders handed over a foundation capital of "325,105 UGD which at the time of formation has a market value of SEK 379,764". According to notification, which was signed on May 26, 2021, the market value amounted to the assets to the same amount in Swedish kronor, SEK 379,764. In the notification described the nature of wealth as virtual currency. By the hand lings attached to the notification, it appears that the assets are so-called crypto assets.

As for the value of the separate property at the time of the formation of the foundation, is it is not disputed that at that time it amounted to the equivalent

SEK 379,764 or that property of such value would not be sufficient for to promote the purpose according to the notification. The County Administrative Board, on the other hand, has stated that crypto assets as such are volatile and that it is difficult to value them. However, the Court of Appeal notes that the volatility of and the difficulty of value cryptoassets are not such that they mean that cryptoassets as an asset class lacking an economic value. Risks of fluctuations in the value as well as in selling and buying rates also apply to other types of assets, e.g. shares. Crypto assets can generally be bought and sold and also used as means of payment. In addition, trading in crypto-assets is treated tax in terms of the income type capital, whereby the result is determined as a starting point from a market value determined in Swedish kronor. It can thus be established that the asset type does not lack value. The mere fact that the separate property consists of crypto-assets thus does not mean that the duration requirement in ch. 1 Section 2 of the Foundation Act is not fulfilled.

The question of the wealth according to ch. 2 Section 4 of the foundation act is placed on an acceptable way through the possession of the crypto-assets or not, lacks significance for the question of whether the notified should be registered in the foundation register, then the assessment during the registration procedure should be limited to the minimum requirements for foundation formation are met. The provisions of a foundation administration in ch. 2 Section 4 of the Foundation Act thus goes beyond the minimum requirements which shall form the basis of an examination during the registration procedure.

In summary, the Court of Appeal considers that in the light of that county the board relied on is not obvious that what has been notified for registration is not a foundation. The County Administrative Board has therefore not had the right to refuse to register The Unigrif Foundation in the foundation register. The appeal must therefore be approved.

HOW TO APPEAL, see Appendix B (Form 1).

Mattias Almqvist

Ann-Charlotte Borlid

Elin Nakus

referent



**ADMINISTRATIVE LAW
I GÖTHEBORG**

Avd. 1

DOM

2022-02-14

Announced in Gothenburg

Measure

no 9054-21

COMPLAINT

The foundation The Unigrid Foundation

Representative: Lawyer Camilla Waldenberg

COUNTERPART

The County Administrative Board in Västra Götaland County

OVERRULED DECISION

County Administrative Board's decision 2021-06-29, diary number 206-24041-2021

THE CASE

Question about registration of a foundation according to the Foundations Act (1994:1220)

DECISION OF THE ADMINISTRATIVE COURT

The administrative court rejects the appeal.

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BACKGROUND

General background

The foundation The Unigrid Foundation (the foundation) has been notified for registration in the county board's register of foundations.

The purpose of the foundation is to develop and promote continuous development of an internet-based, redundant, anonymous and decentralized network. For this purpose, the founder has set aside crypto-assets in the form of virtual currency, so-called UGD. The foundation document shows that the foundation capital amounted to 325,105 UGD which at the time of formation had a market value which corresponded to 379,764 Swedish kronor. The foundation's assets consist solely of these crypto assets. It is not clear from the foundation's regulations how the wealth must be invested.

The County Administrative Board's decision

The County Administrative Board decided not to register the foundation in the foundation register. The decision was motivated as follows.

It is not clear from the foundation's regulations how the wealth is to be invested. According to the Foundation Act requires a foundation to invest its assets in an acceptable manner. In practice, this has been interpreted as meaning that they should be placed safely, but without the return goes down unnecessarily.

Because crypto-assets, with regard to the Financial Supervisory Authority's supervisory report, are very price volatile, i.e., risk of large price fluctuations, and cannot hold a stable value, it is not possible to determine whether the foundation meets the requirement of duration to further the foundation's purposes.

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The County Administrative Board considered that the foundation's assets could not be considered to be placed in an acceptable manner. The risks that are always associated with wealth management should be spread in an appropriate manner. According to the Financial Inspectorate's supervisory report, the purchase of crypto assets should be viewed as a speculative purchase, and not as an investment. Its price volatility sensitivity means they cannot maintain a stable value. A foundation that only holds intangible assets resulting in unstable value cannot be considered to have an acceptable placement of the assets. The important economic factors have thus not been taken into account consideration in the assessment of the placement of the assets. County Administrative Board therefore judged that the duration requirement was not met, nor that the foundation's capital was invested in an acceptable manner. As a result, considered county administrative board that it was not obvious that what was reported for registration could be designated as a foundation and any registration in the foundation register therefore could not take place.

REQUESTS ETC

The foundation demands that the county board's decision be changed and that registration be granted and essentially states the following. The County Board's position that the wealth is not placed in an acceptable manner and that the requirement for duration is not fulfilled seems to be based solely on the fact that it is about placement in a virtual currency. The County Administrative Board has taken that as a point of departure which is written at the Financial Supervisory Authority regarding cryptocurrency, mainly current cryptocurrency as an investment for consumers. The comparison with a private person investing in virtual currency by purchase is completely incorrect. The virtual currency that the foundation owns is not purchased on any market and does not rather placed in any trading place. It is "minted" by the Foundation and is one stable asset which is currently not affected by ups and downs the market.

It also doesn't seem like the county board is aware that virtual currency in the near future will be regulated by the EU through the "Proposal to Regulation of the European Parliament and of the Council on markets for crypto-assets and amending Directive (EU) 2019/1937). The Commission writes in the proposal among other things that "crypto-assets are one of the most important applications of blockchain technology in the financial sector." Claiming that a foundation working with block chain technology/blockchain, a technology that the EU considers to be the basis for the future digital financial sector, does not have the knowledge to assess the risks with the placement of assets in virtual currency only shows a lack of understanding.

To judge that the duration requirement is not met despite assets of over 300 SEK 000 is currently unreasonable because the project on which the foundation is based has existed on a non-profit basis since 2019. The network has developed non-profit, hardware has been donated to support the operation of the network and training within blockchain has been implemented, among other things, by the founders and other nonprofits committed people have written and published articles in the field. There is no costs for the foundation yet as all work is done on a non-profit basis. The foundation is coming nor incur such costs before you have completed agreements with investors who want to finance the project/foundation. The assets that exist, even if they were to halve in value, they will be able to bear small costs for for example audits that will arise in the next few years. Not until further income comes in through investors or the business comes one for example, to hire the people who are now working on a non-profit basis. Highest the administrative court has, with reference to the preparatory work, stated the requirement for duration means that the appointment must be able to be effective in any case some years. The foundation will, in its current form, be able to be without problems operating for several years with the capital that exists today, even if it declines value, just as any stock investment or mutual fund investment can do.

The County Administrative Board also does not seem to have taken into account that it is about one business foundation. The purpose of a business foundation is, as it were appears from the name, to run a business. A business activity has as its purpose to bear its own running costs and would like to increase its fortune. In a foundation, the idea is that a profit from business activities should be used for the foundation's purposes. You should keep this in mind when trying the question of duration, even if the starting point is the assets at the time of formation.

The attitude of the County Administrative Board

The County Administrative Board considers that the appeal should be rejected.

REASONS FOR THE ADMINISTRATIVE COURT'S DECISION

Legal regulation

From ch. 1 Section 2 of the Foundations Act states that a foundation is formed by property according to the order of one or more founders is set aside to be permanently managed as an independent asset for a specific purpose. Foundation property shall be considered separated when it has been taken care of by someone who has undertaken to administer it in accordance with the foundation ordinance.

In ch. 2 Section 4 of the same law states that insofar as it does not follow from the foundation the arrangement of how the foundation's assets are to be invested, the board answers or the trustee because the wealth is placed in an acceptable way.

Of 10 ch. Section 1 first paragraph of the same law states that a foundation must be registered.

The assessment of the Administrative Court

In order for a foundation to be considered to have been formed, the Foundation Act requires that it contributed capital must be managed permanently. In this lies that it should be possible to fulfill the purpose with the detached property for several years.

The assessment of whether the duration requirement is met is assumed to take place with starting point in the property set aside for the foundation at the time of formation and without that consideration is given to any declarations about further additions, see prop.

1993/94:9 p. 52 and 108. The administrative court considers that the current foundation the capital of SEK 379,764 appears low in this perspective, and especially against background of the fact that the entire capital consists of crypto-assets, which is a lot difficult to value and has a high price price volatility – something as well

The Financial Supervisory Authority, which many authorities in the world testify to. Against background of this, the administrative court shares the county board's assessment that it does not able to determine whether the foundation meets the requirement of duration in order to promote the purpose of the foundation. What the foundation states in this part does not change the assessment.

What then applies to the requirement that the foundation's assets must be invested in in an acceptable manner, the administrative court makes the following assessment.

In the draft legislation, it is stated that the word acceptable is intended to express the requirements of the law at a minimum level in terms of placement of foundation assets. The assessment shall take place from a holistic perspective. This means that it decisive is the composition of the entire part of the foundation's assets regarding which it does not follow from the foundation ordinance how it should be placed. Behind the provision is thus the view that the risks as always are associated with wealth management should be disseminated in such a way that the foundation's assets overall appear to be acceptably invested. At the assessment that must take place is, of course, a variety of factors economic nature to be considered. One such factor is safety in the form of

security against nominal losses and another that the protection against the capital eroded by the continuing deterioration of monetary value. Other factors are partly the wealth's return in the form of interest or other dividends, partly the possibility of real value appreciation. Another factor that can be of importance in the context is the possibility to be able to without much time reallocate the assets. This provision does not mean that any of the now stated, often more or less opposing factors shall generally be prioritized over the others. The intention is therefore not to, for example, security against nominal losses must always weigh more heavily in the assessment than the possibility of real value increase, see prop. 1993/94:9 p. 121 f.

As stated above, the foundation's entire capital consists of crypto-assets and these have been described by authorities around the world as difficult to value and that they are associated with high price volatility. The foundation has objected that it report from the Financial Supervisory Authority that the county board refers to is about consumers and that the report, as it may be understood, is therefore not relevant then it applies to the foundation. The fact that the report concerns consumers brings, according to the assessment of the administrative court, not the fact that the assets are difficult to value and that it can be a very uncertain investment due to high volatility means higher risk due to the fact that large changes in value can be expected relatively short time. Against this background, the administrative court considers that the requirements that it Swedish legislation currently in force stipulates that a foundation's assets must be placed in an acceptable manner is not met. As a result, a foundation according to ch. 1 Section 2 of the foundation act has not been formed and no registration shall therefore take place according to ch. 10. § 1. The appeal must therefore be rejected.

HOW TO APPEAL, see Appendix 1 (FR-03)

Ann-Louise Björnsson
Chief Councilor



How to appeal

FR-03

If you want the decision to be changed in any part, you can appeal. Here you will find out how it is done.

Appeal in writing within 3 weeks

The time is usually counted from the day you received the written decision. In some cases, the time is instead counted from the date of the decision. This applies if the decision was handed down at an oral hearing, or if the court gave notice of the date of the decision at the hearing.

For a party representing the public (for example authorities), the time is always counted from the day the court announced the decision.

Note that the appeal must have reached the court by the time the deadline expires.

What day does the time expire?

The last day for appeals is the same day of the week that the time starts counting. For example, if you received the decision on Monday, March 2, the time will expire on Monday, March 23.

If the last day falls on a Saturday, Sunday or holiday, Midsummer's Eve, Christmas Eve or New Year's Eve, it is sufficient that the appeal is received on the next weekday.

How to use

1. Write the name and case number of the administrative court.
2. Explain why you think the decision should be changed. Tell us what change you want and why you think the Court of Appeal should

file your appeal (read more about leave to appeal further down).

3. Talk about what evidence you want to refer to.

Explain what you want to show with each piece of evidence. Submit written evidence that is not already in the case.

4. Leave name and social security number or organization number.

Provide current and complete information about where the court can reach you: postal addresses, e-mail addresses and telephone numbers.

If you have an agent, also provide the agent's contact details.

5. Send or submit the appeal to the administrative court. You will find the address in the decision.

What happens next?

The administrative court checks that the appeal was received in time. If it is received too late, the court rejects the appeal. This means that the decision applies.

If the appeal is received in time, the administrative court forwards the appeal and all documents in the case to the Court of Appeal.

If you have previously received a letter through simplified service, the Court of Appeal can also send a letter in this way.

Permission for trial in the Court of Appeal

When the appeal comes to chambers - the court, the court first takes a position on whether the case should be taken up for consideration.

The Court of Appeal grants leave to appeal in four different cases.

- The court considers that there is reason to doubt that the administrative court ruled correctly.
- The court considers that it is not possible to assess whether the administrative court ruled correctly without taking up the case.
- The court needs to take up the case to give other courts guidance in the application of the law.
- The court considers that there is extraordinary reasons to raise the case for any other reason.

If you *do not* receive leave to appeal, the appealed decision applies. Therefore, it is important to include everything you want to bring forward in the appeal.

Do you want to know more?

Contact the Administrative Court if you have questions. You can find the address and phone number on the first page of the decision.

More information is available at www.domstol.se .

HOW TO APPEAL

Anyone who wishes to appeal the Court of Appeal's decision must write to the Supreme Administrative Court. The letter is therefore sent to the Supreme Administrative Court *but must be sent or left to the Court of Appeal.*

The appeal must have been received by the Court of Appeal *within three weeks* from the day the appellant was notified of the decision. If the decision has been announced at an oral hearing, or it has been stated at such a hearing when the decision will be announced, the appeal must, however, have been received within three weeks from the day the court's decision was announced. However, the time for appeals for the general public is counted from the day the decision was announced.

If the last day for appeals falls on a Saturday, Sunday or holiday, Midsummer, Christmas or New Year's Eve, it is sufficient that the letter arrives the next weekday.

In order for an appeal to be taken up in the Supreme Administrative Court, leave to appeal must be *granted*. The Supreme Administrative Court grants leave to appeal if it is important for the administration of the law that the appeal be tried or if there are special reasons for such a review, such as that there is a basis for appeal or that the outcome of the case in the Court of Appeal is obviously due to gross oversight or gross error.

If leave to appeal is not granted, the Court of Appeal's decision is final. It is therefore important that it is clearly stated in the appeal to the Supreme Administrative Court why it is considered that leave to appeal should be granted.

The letter of appeal must contain the following information:

1. the complainant's name, social security/organization number, postal address, e-mail address and home telephone number and mobile phone. In addition, the address and telephone number of the workplace and any other place where the complainant can be reached for service must be provided if this information was not previously provided in the case. If the complainant hires a representative, the representative's name, postal address, e-mail address, telephone number for the workplace and mobile phone number must be stated. If any personal or address information changes, it is important that the notification is made to the Supreme Administrative Court as soon as possible
2. the decision that is being appealed with information about the name of the court of appeals, case number and the date of the decision
3. the reasons that the appellant wishes to cite for his request for leave to appeal
4. the change to the Court of Appeal's decision that the appellant wants to have and the reasons for this
5. the evidence that the appellant wants to rely on and what he/she wants to prove with each particular piece of evidence.