PRECONDITIONS FOR DISSOLUTION OF FOUNDATIONS IN FINNISH LAW: NORMS AND REALITY

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I. APPROACH TO THE PROBLEM

A. *The Relation between Alteration of Aim and Dissolution, As Laid Down in the Foundations Act*

Concerning the preconditions for changes in a foundation's statutes and for dissolving the foundation, the following is prescribed in secs. 17 and 18 of the Foundations Act:[1]

> Sec. 17. If an amendment of the statutes of the foundation is found to be necessary owing to changed circumstances or for some other reason, the foundation shall undertake the amendment and apply to the Ministry of Justice for approval of such amendment.
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> The aim of the foundation may be altered only if further use of the foundation's assets for the purpose prescribed for it would be impossible or obviously ineffective in view of the foundation's restricted assets or for some other reason, or contrary to law or public morals, and if there can suitably be assigned to the foundation a new aim which is not substantially different from its original aim. Any decision concerning a change in the foundation's aim shall be made, unless otherwise prescribed in the foundation's statutes, by a majority of three quarters of the total votes cast.
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> The approved amendment of statutes shall be entered in the Register of Foundations of the Ministry without any specific notification. The amended statutes may not be implemented until the amendment has been entered in the register.
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> Sec. 18. A foundation which has been established either for a predetermined period or subject to certain prescribed preconditions shall, when the said period has expired or when the preconditions in question no longer exist, be dissolved with the assent of the Ministry of Justice.
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> If a situation of the kind referred to in sec. 17, subsec. 2, has arisen and if the aim of the foundation cannot be altered, the provisions of subsec. 1 shall be applied.
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> At the request of a public prosecutor, the court of first instance at the foundation's place of domicile may, if the foundation's activities are constantly contrary to law or to the foundation's statutes, discharge the board of the foundation or remove a member thereof from office or, when reasons therefor exist, declare the foundation dissolved. If the board of the foundation is discharged, the provisions in subsecs. 1, 3 and 4 of sec. 14 a shall be applied.

[1] The Foundations Act, April 5, 1930/109, amended July 13, 1964/400. The act is applicable only to independent, private-law foundations.

From this it is clear that the general precondition for any *changes in the statutes* is the *necessity* of such changes. The *aim,* however, may be altered only in the *specific situations* enumerated in the act. *Dissolution,* again, appears to be envisaged only in the following three groups of cases, which are completely different from one another:

(1) where the founder himself has made provision for dissolution by establishing for the foundation a fixed period or by making its activities subject to certain prescribed conditions;
(2) where the foundation has arrived at what may be called a situation of futility (see sec. 17, subsec. 2), but it is not possible to change its aim, because, for instance, no new aim close to the original aim can be found for which the remaining assets would suffice; and
(3) as a sanction for activities that are contrary to law or to the foundation's statutes.

In the first two groups of cases dissolution has to be effected with the assent of the supervisory authority, the Ministry of Justice. In the third group, owing to the nature of the situation, dissolution is a court matter.

From the wording of the act, as well as from its *travaux préparatoires,* the inference can be drawn that the legislators have desired (with the exception of the special situations mentioned above under (1) and (3)) to assign to dissolution a secondary position in relation to alteration of the aim. Thus, it is intended that in the first place endeavours should be made to rectify any disturbances of the foundation's activities due to changed circumstances, etc., by altering the foundation's aim with a view to making this consistent with the new conditions or with the foundation's depleted resources. Dissolution should be considered only in the event of failure to make changes.

In adopting this attitude, the Finnish legislators have followed foreign models. Dissolution of a foundation is generally thought to be a means which is resorted to only when all possibilities of adapting the foundation to the changed conditions have proved impracticable.[2]

B. *Relative Frequency of Alteration-of-Aim and Dissolution Cases*

A scrutiny of the files of the authority supervising foundations, viz. the Ministry of Justice, reveals that changes in the statutes that are aimed at

[2] See, e.g., Ludwig Enneccerus and Hans Carl Nipperdey, *Allgemeiner Teil des Bürgerlichen Rechts. Erster Halbband,* 14th ed. Tübingen 1959, p. 724: "But this most acute means [dissolution] should only be applied when all other means do not suffice" (translated), and Henrik Hessler, *Om stiftelser,* Stockholm 1952, p. 370: "... because to *dissolve* a foundation on grounds of changed external conditions can obviously more rarely be considered to conform with the founder's wish" (translated).

bringing about organizational reforms, etc., are fairly common. The same cannot be said of alterations of aim. It is evident from the Register of Foundations that in the group of registered foundations, numbering approximately 1,550, alterations of aim have been made in only about 40–50 cases during the period of slightly more than 40 years in which the Foundations Act has been in force. The number cannot be stated with complete accuracy, as it is far from easy to draw a line between alterations of aim and other changes. It is not apparent from the Ministry's decisions in which instances a change in the statutes has been considered to be an alteration of the foundation's aim. The number of 40–50 given above comprises a great number of cases which concerned merely a more precise formulation of the definition of aim in the founding document. In some instances the *form* of activity has been altered: for instance, an institutional foundation has been converted into a capital-based foundation. Only in a very few cases has there been a really radical modification of the *purpose* for which the foundation's assets may be used.

Assent to dissolution had been given by the Ministry of Justice in a total number of 199 cases up to the end of June, 1974. This number seems surprisingly high compared with that for alterations of aim. It is natural to ask whether in Finland it is, for some reason or other, actually easier to dissolve a foundation than to alter its purpose, or whether there is some other explanation for this disparity.

II. THE PRACTICE FOLLOWED IN MATTERS OF DISSOLUTION

A. *The Method Adopted in the Present Study*

In order to clarify the manner in which the preconditions for the dissolution of a foundation are interpreted in the administrative authority's practice, all those cases were investigated in which a foundation registered with the Ministry of Justice was dissolved. By calendar year, the decisions in favour of dissolution were distributed as is shown in Table 1.

The number of dissolutions approved annually has clearly increased. This is thought to be partly due to the fact that as time passes it becomes increasingly likely that the assets of a foundation will have been used up or will have dwindled through inflation or for other reasons, or that other obstacles to continued activity will have emerged. The increase may also be connected with the fact that the number of foundations established annually has also risen to some extent. Moreover, it is believed to be easier

Table 1

Year	Decisions for Dissolution	Year	Decisions for Dissolution	Year	Decisions for Dissolution
1931	None	1946	None	1961	6
1932	None	1947	2	1962	14
1933	None	1948	1	1963	12
1934	None	1949	2	1964	13
1935	1	1950	3	1965	9
1936	None	1951	6	1966	16
1937	None	1952	3	1967	10
1938	None	1953	2	1968	8
1939	None	1954	3	1969	12
1940	None	1955	2	1970	9
1941	None	1956	2	1971	17
1942	None	1957	4	1972	8
1943	None	1958	4	1973	8
1944	3	1959	3	1974 (to June 30)	10
1945	3	1960	3		

nowadays, thanks to more effective control, to discover obstacles to, and irregularities in, the activities of foundations and to draw the attention of the body administering a foundation to the existence of a dissolution situation.

The increase in the frequency of dissolution was strikingly high in the 1960s. One possible explanation of this phenomenon may be a change in the conception held by the supervising authority concerning the interpretation of the Foundations Act, and this in turn may be connected with changes in the personnel responsible for the decisions.

A study of the preconditions for dissolution based upon the decisions of the Ministry of Justice is impeded by the fact that as a rule the reasons for such decisions are not set out. Most frequently the decision granting permission for dissolution has been phrased as follows:

> At presentation on this day . . . the Ministry of Justice has found it proper, seeing that the preconditions subject to which the foundation was established no longer exist, to give its assent, by virtue of sec. 18 of the Foundations Act, to the dissolution of the . . . foundation and at the same time to authorize the foundation to assign the remaining assets . . . .

It will thus be seen that the decisions furnish little help in clarifying the circumstances which have resulted in the application for dissolution and the grounds on which the supervisory authority has considered it possible to give its assent thereto. It therefore proved necessary in the present study

to undertake a scrutiny of the applications for dissolution. These reveal in each instance the set of facts on the strength of which assent to dissolution was given.

B. *Different Groups of Dissolution Cases*

As can be seen from the example cited above, in the decisions of the Ministry of Justice granting assent to dissolution reference is made to sec. 18 of the Foundations Act, though usually without specifying the subsection by virtue of which assent was given. But in view of the object of this study, which is to find out why the dissolution of foundations has become a more common measure than alteration of their aim, it is of interest to know whether the Ministry's assent to dissolution was given by virtue of subsec. 1 or subsec. 2 of the provision invoked. With a view to discovering this, recourse was had in each case to the wording not only of the decision but also of the application prepared by the foundation. An attempt was made to conclude on the basis of this which of the two subsections was held to relate to the particular situation. For instance, if the final result is founded on the observation that the "specific preconditions" for the activities of the foundation no longer exist, it has been considered that assent was granted on the strength of sec. 18, subsec. 1, of the Foundations Act. The same inference has been drawn if in the *ratio* of the decision and/or in the application nothing is said with regard to the possibility of altering the aim.

A scrutiny of the material in the light of these criteria shows that the dissolution decisions, totalling 199 as we have seen, are most unequally distributed between the two grounds for dissolution. Altogether 193 foundations have been dissolved by virtue of subsec. 1 of sec. 18 of the act, that is to say on the ground of the disappearance of preconditions imposed on the foundation's activities. Thus it was in only six cases that dissolution was undertaken as a substitute for alteration of an aim found impracticable.

The surprisingly uneven distribution of cases serves to emphasize the modest role played by alteration of aim as compared with dissolution. It also gives rise to two reflections. On the one hand, the figures presented would seem to suggest that Finnish foundations very seldom feel impelled to make use of the possibility of altering the aim. On the other hand, the figures suggest that quite often the founders have based their creation on preconditions which are so specific that their disappearance necessarily implies the emergence of a dissolution situation, as referred to in sec. 18, subsec. 1. In order to establish whether these assumptions are valid, it will be necessary to undertake a closer study of the cases.

The 193 cases in which assent to dissolution was considered to have been given by virtue of sec. 18, subsec. 1, of the Foundations Act can appropriately be divided, in accordance with the wording of that provision, into two main groups: cases where assent to dissolution was granted on the ground that the *fixed period* specified for the foundation *had expired* and cases where it was granted on the ground that the *preconditions* subject to which the foundation had been established *no longer existed*. Using this criterion for division, we find a distribution between the two groups of 4 : 189. In other words, only on four occasions was assent to dissolution given because of the expiration of the period fixed for the activities of the foundation in its statutes. It thus remains to clarify the nature of the "specific preconditions" whose disappearance has so markedly reduced the number of Finnish foundations. On closer study it can be seen that the 189 cases making up this group can reasonably be further divided into two subgroups, the first consisting of cases where the "specific precondition" in question *is stated in the statutes* and the second of cases in which the supervisory authority has *construed* the activity of the foundation as having been based on such a specific precondition. There are only seven instances in which explicit provisions in a foundation's statutes on grounds for dissolution appear to have been applied, whereas in a total of 182 cases the Ministry has considered itself able, without support from the statutes, to infer that the foundation's activities were based on a specific precondition of such a kind that its disappearance did not call for an alteration of aim but for the dissolution of the foundation.

These 182 cases are the most interesting ones from the viewpoint of the present study. However, they are rather too numerous and heterogeneous to be profitably considered as a single unit. A further subdivision is therefore indicated.

Taking into account the two fundamental elements of a foundation—its assets and its aim—the cases under consideration may be divided into two categories according to whether the circumstance which the Ministry considered to constitute a specific precondition was connected with the financial standing of the foundation or with its aim. This criterion, however, is not very easy to apply: in by no means every instance does the foundation content itself with alleging only one reason for its application for dissolution; usually, a veritable heap of difficulties is unloaded on the Ministry's doorstep. With a view to assigning each case of dissolution to one single category, the method adopted in this study has been to attach significance solely to the reason presented as the primary one, thus completely ignoring the so-called additional grounds. This yielded the following result: in 128 cases the reason for dissolution was connected with the financial

standing of the foundation, and in 46 cases with its aim. Eight of the cases could not unequivocally be assigned to either group.

Even after making this distinction, the categories of dissolution cases are comparatively large, and they contain individual situations which differ greatly. For closer study a still more detailed classification is required. The above-mentioned category of 128 cases has therefore been subdivided into four classes according to the following causes of dissolution:

(a) the foundation was established with inadequate initial funds (40 cases);
(b) the assets had been used up (74 cases);
(c) the assets had already been handed over to be used for purposes consistent with the foundation's aims, and only thereafter was application for assent to the dissolution of the foundation filed (10 cases); and
(d) the foundation never received the assets which it had been promised by the founder in connection with the founding (4 cases).

The category of 46 dissolution cases involving the aim of the foundation has been divided into five classes. The causes leading to the dissolution of the foundation in these five classes may be described as follows:

(a) the aim had been fully accomplished (10 cases);
(b) accomplishment of the aim had become impossible (3 cases);
(c) the aim in itself had proved to be such as not to warrant support (3 cases);
(d) the aim had been taken care of in another way (22 cases); and
(e) the foundation had proved a failure, as a form of organization, in regard to achievement of its aim (8 cases).

C. *Description of Cases and Some Remarks*

In what follows, the material which lies behind these classifications will be presented in the light of a few exemplary cases.

1. *Expiration of predetermined period*

Least obscure, as regards the preconditions for dissolution, are those cases in which assent to dissolution was given for the reason that *the period specified in the statutes* of the foundation for its activities *had expired.* One example of this should suffice.

> According to the statutes of the President Urho Kekkonen Foundation, entered in the Register in 1962, the assets of the basic funds were to be used up within a period of ten years from September 3, 1960. This was done, and the

foundation obtained permission for dissolution by decision no. 437/71/71 of the Ministry of Justice, rendered March 4, 1971.

In cases where the founder has stipulated that the foundation shall cease its activities after the expiration of a specified period, problematic situations may arise if the board fails to take the requisite steps for dissolution. If the board continues the foundation's activities even though the specified period has expired, it is acting contrary to the foundation's statutes. Then, naturally, the supervisory authority has the possibility of taking the measures which the Foundations Act provides for the possibility of a board's violating the law or the foundation's statutes. It is another matter that the supervisory authority may not find it very easy to keep watch themselves over the observation of the specified periods. The secondary beneficiary, if any, i.e. the party to whom the residual assets should pass when the foundation is dissolved, is then likely to call the authority's attention to the state of affairs.[3] The efficiency of this "possibility of control" is reduced, on the one hand, by the very restricted interest usually attached to the matter by the beneficiary (the assets to be expected are not as a rule very substantial) and, on the other, by the circumstance that more often than not the secondary beneficiary is not even aware of the existence of this possible benefit.

2. *Fulfilment of a dissolution condition*

Similarly, no particular problems as regards dissolution are present in those cases in which *the founder himself has made the continued activities of the foundation subject to a given precondition.*

In cases where the foundation in our classification is assigned to this group, the specific preconditions appear to have been of three types. The first one is represented by the provision that the disappearance of beneficiaries shall result in the dissolution of the foundation.

The Pensions Fund of the company Suomen Sokeri Aura was founded in 1947 for the purpose of providing retirement pensions for the company's employees. The fund was entered in the Register of Foundations in 1948. According to the statutes, the foundation was to be dissolved if the company should cease to exist or if the foundation should not be equal to its aim. As the company had ceased to exist, it was decided to dissolve the foundation, and the Ministry of Justice gave its assent thereto on March 24, 1962, AD. no. 251/187 Oik.m. 1962.

[3] It is enacted in sec. 15 of the Foundations Act, among other things: "If the founder or one for whose benefit the activity of the foundation is carried on considers that the board of the foundation has acted contrary to law or to the foundation's statutes, he may address the Ministry of Justice with a request for rectification."

In the second type, the founder has reserved to himself the power to dissolve the foundation. The foundation may then be considered to operate under the specified precondition that the power of dissolution has not been exercised.

The foundation of the shareholders of OY Savo-Karjalan Tukkuliike, which was entered in the Register of Foundations in 1932, had in art. 9 of its statutes the following provision: "If the shareholders' meeting of OY Savo-Karjalan Tukkuliike should decide either to terminate the activities of the company or to dissolve the foundation, the said shareholders' meeting shall at the same time determine the future use of the foundation's assets." In 1947, by resolution of the shareholders' meeting, a foundation named Savo-Karjalan Tukkuliike was established, to which, among other things, the assets of the earlier foundation were transferred. The Ministry of Justice gave its assent to the dissolution by its decision of Sept. 27, 1947, no. 1592/91 Oik.m. 1947.

Representative of the third type is the provision that the foundation shall be dissolved when it has become unnecessary. Such a ground for dissolution has a built-in disadvantage: the difficulty of measuring the necessity of a foundation. It is therefore hardly surprising that in the applications for dissolution reference is made to this provision only where other grounds are given as well.

The foundation called the Eva Ahlström Hospital in Noormarkku was entered in the Register of Foundations in 1932. Its aim was to provide medical care for the employees of a certain company. The statutes prescribed that the foundation should be dissolved if, among other contingencies, the hospital should prove unnecessary owing to changed circumstances. Application for dissolution was filed in 1960, after the board of the foundation had come to the conclusion that the foundation was no longer able to maintain the hospital and that the medical care of the company's employees was now adequately provided for in other ways and the hospital as maintained by the foundation must be considered unnecessary in the locality in question, owing to a change in the hospital facilities available. The Ministry gave its assent to dissolution by its decision of December 1, 1960, AD. no. 111/140 Oik.m. 1960.

3. *Inadequacy of assets*

By far the largest group of decisions for dissolution of a foundation consists of those given *on account of the exhaustion or depletion of the foundation's assets*. In view of the fact that the average life span of the dissolved foundations is slightly less than twenty years, it seems not unreasonable to assume that quite often the root cause of the dissolution is to be found in an inadequacy of the foundation's capital from the very beginning.

a. Human nature being what it is, frequently a foundation is established somewhat precipitately *with inadequate initial funds* in the optimistic belief that the circle of friends and citizens enthusiastically embracing the idea will hasten to augment the foundation's assets. But quite often disappointment is waiting at the door. This is in fact reflected in the practice of the Ministry of Justice. No fewer than 40 foundations had to be dissolved because the initial capital proved inadequate and the expected increase of assets did not materialize. Judging from the dissolution-application documents, the expectations seem to have been of two kinds: in some instances it was believed that the minor intitial capital would grow through donations, while in others reliance was placed in the natural accretion of the capital.

> The Workers' Cultural Foundation of Uuras was established in 1961 and registered two years later. It obtained permission to dissolve by decision of the Ministry of Justice, April 29, 1968, AD. no. 219/177 Oik.m. 1968. The board observed in its application that the foundation had not received donations from other local organizations and from private persons as had been expected when the foundation was established.
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> In the case of another foundation, an obvious disproportion between the aim and the capital appears to have been present. The aim of the Maria and Ida Rytkönen Foundation, established 1938, was defined in art. 2 of the statutes as follows: "The aim of the foundation is, as soon as sufficient assets accrue to the foundation, to procure and maintain in the city of Helsinki an up-to-date hospital or other institution for medical care, provided with diversified therapeutic facilities and equipment, for sick and convalescent persons, with the public weal in mind in so far as the object of the foundation is to care, within its capacity, for the indigent and for persons of small means." By way of fundamental capital, 25,000 old Fmk was given. By 1962 the foundation's assets had increased to 62,000 old Fmk. In its dissolution application the board of the foundation observes that accomplishment of the aim stated in the statutes was not possible with such meagre funds. The Ministry granted permission for dissolving the foundation, by its decision of April 27, 1962, AD. no. 660/118 Oik.m. 1961.

In the case of many of the foundations belonging to this group it was already clearly evident at the time of their establishment that the assets could not grow to the amount stated in the statutes or to the amount requisite for realizing the aim within a short period. That being so, it hardly seems appropriate to justify the permission for dissolution, as the Ministry of Justice did in this case, by saying that the *preconditions* on which the foundation was established *no longer* exist. Disappearance of the preconditions for establishment should be invoked only if the growth of means has developed at a considerably slower rate than was expected.

b. The overwhelming majority of foundations were dissolved on the ground that *the assets had been used up.* Out of 74 such cases, two may serve as examples.

> The Suomi Foundation, which was established in 1931, was dissolved by resolution of the Ministry of Justice on March 27, 1963, AD. no. 90/16, Oik.m. 1963. The funds of the foundation had diminished to such an extent that the revenues did not even suffice for administrative costs.
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> The Sundblad Foundation was entered in the Register in 1945. After 18 years the assets were found to be depleted to such an extent that the scholarships which could be awarded had no practical significance. Permission for dissolution was given by decision of the Ministry of Justice on July 8, 1963, AD. no. 397/68 Oik.m. 1963.

In the cases belonging to the group now under consideration, it is quite natural to speak of the disappearance of "specific preconditions". These cases are in fact the most clear-cut ones among those decisions to grant permission for dissolution in which the reason for dissolution is the disappearance of a precondition associated with the foundation's financial state and *not stated* in the statutes.

c. A distinct group among the foundations which were granted permission to dissolve owing to inadequate or exhausted assets consists of those foundations whose *managing bodies have assigned the assets belonging to the fund* to purposes consistent with the foundation's aims and have after this event submitted to the Ministry of Justice an application for permission to dissolve the foundation.

> The Care Foundation of the Central Finland Region was established in 1944 to aid those who suffered during the war. The foundation donated its assets to the Ukonniemi Disabled Persons' Home Foundation in 1955, but it was not until eight years later that an application for dissolving the foundation was filed. The Ministry of Justice decided in favour of the application on October 25, 1963, AD. no. 666/112 Oik.m. 1963.

In the ten cases assigned to this group, the administrative bodies of the foundations appear to have taken into their own hands the power which in the Foundations Act is entrusted to the authority supervising foundations, i.e. the Ministry of Justice. Since according to law dissolution requires the assent of the Ministry of Justice, this fact by no means implies that the board of a foundation can wind up the foundation by giving away its assets and afterwards obtaining approval of the *fait accompli.* It is true that it devolves on the body administering the foundation to take the decision

concerning dissolution. But since assent thereto is a matter for the Ministry of Justice, it follows that the Ministry has to examine the existence of preconditions for dissolution in each individual case. This is in fact true even in the case where a foundation was established for a specified period. Only after permission for dissolving has been obtained can actual steps to this end be undertaken, such as the disposal of any residual assets.

d. A group which is of minor importance is that in which dissolution was caused by the fact that *the foundation never received the assets intended in the founding documents to be given to it.* There are only four such cases.

> The Kerttu Paloheimo Orphanage Foundation, the aim of which was to acquire a home mainly intended for war orphans, was entered in the Register in 1946. According to the statutes approved for the foundation, the founder was to relinquish to the foundation for its use the requisite buildings and real estate after the foundation had been registered. Since, however, the buildings and real estate necessary for the foundation's activities were not in fact placed at the foundation's disposal, application for dissolution was filed: it was considered that preconditions adequate for accomplishment of the foundation's aims did not exist. The Ministry granted the request for dissolution by its decision of August 14, 1970, AD. no. 483/1228–1970.

The cases found in this group demonstrate that the existing legal rules on the assignment of assets promised to a foundation are not perfect.

If a foundation is established through a will, the right to annul the testamentary provision will be determined in accordance with the general provisions on annulment of wills.[5] The creation of a testamentary foundation is secured by means of those provisions in the Foundations Act which impose on the court the obligation to ensure that somebody shall take the requisite measures for establishing the foundation.[5] The will is at the same time the ground for the creation of the foundation as such and also the ground for the acquisition of assets accruing to it.

A foundation deed, too, appears according to the wording of the act to be both the founding document of the foundation and the acquisition document with regard to the assets coming from the founder: "If anyone desires to assign assets for the purpose of founding an independent foundation, he shall set up an acquisition document therefor."[6] The founder is entitled to cancel the founding provision contained in such a deed, up to the time when the foundation has been entered in the Register.

[4] See Code of Succession 10 : 5.
[5] Sec. 3, subsec. 2, of the Foundations Act. See also sec. 20, subsec. 1.
[6] Sec. 1 of the Foundations Act.

The cessation of the right to cancel the provision would seem to imply not only that thereafter the creation of the foundation can no longer be annulled, but also that the promise contained in the deed to hand over assets becomes irrevocable. However, for various reasons the promise may fail to have the intended effects. Ineffectivation of the act of promise may be caused by such circumstances as that, prior to the performance of the promise, the founder became insolvent, or that the assets intended for the foundation were lost as a result of a lawsuit filed by a third person.[7] Formal requirements concerning the assignment of real estate may also have the result that the desire expressed in the deed to hand over real estate to a foundation cannot be put into effect after all. This is because it is generally held that the form prescribed for the transfer of real estate in ch. 1, sec. 2, of the Code of Real Property must also be observed when the real estate mentioned in the deed is assigned to a foundation.[8] If this form requirement has not been observed, a valid cession is not considered to have taken place. The consequence of this, in its turn, may be that the preconditions for the activity of the foundation are not fulfilled, as was also demonstrated by the example above.

4. *Fulfilment of aim, futility, etc.*

Foundations have quite often been dissolved on the grounds that *the aim has been fully accomplished* or that *difficulties in achieving the aim have arisen.*

a. In ten cases dissolution came about through accomplishment of the aim.

> In art. 2 of the statutes of the Light Infantry (Finland's War of Independence Voluntary Corps) Monument Foundation, established in 1944 and entered in the Register of Foundations in 1950, the aim of the foundation was stated as follows: "The aim of the foundation is to constitute the initial fund for the erection costs of that monument which . . .". After the monument had been raised, application was filed with the Ministry for permission for dissolution, which was granted by decision of the Ministry on Oct. 22, 1964, AD. no. 664/274 Oik.m. 1964.
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> The aim of the K. M. Brondin Sickness Relief and Distress Aid Fund was to aid, in the event of sickness, etc., those who had been in the employment of a certain enterprise on March 1, 1928. When there were no longer any persons entitled to such aid, the foundation was dissolved by decision of the Ministry of Justice on March 10, 1970, AD. no. 67/159–1970.

[7] Assignments without consideration are, on the whole, not accompanied by responsibility for legal faults.

[8] Thus, e.g., Y. J. Hakulinen, *Kiinteistön luovutuksen muodosta sekä julkisen kaupanvahvistajan tehtävistä*, 2nd ed. Vammala 1949, pp. 77 f. See also T. M. Kivimäki, "Kiinteistölahjan määrämuodosta", *Defensor legis* 1962, p. 14, and T. M. Kivimäki and Matti Ylöstalo, *Suomen sivuutonkeuden oppikirja. Yleinen osa*, 3rd ed. Porvoo 1973, pp. 199 f.

In itself, without any further preconditions, the complete fulfilment of a foundation's aim would not, judging at any rate from the wording of the act, constitute sufficient precondition for dissolution. Rather, it might be considered to imply a justification for an alteration of aim; it should be borne in mind that a new aim has to be found for the foundation if the use of its assets for the original aim has been rendered impossible. But the author submits that these particular cases cannot be judged as straightforwardly as that.

The aims of foundations are of very diverse kinds. It is sometimes possible already when the foundation is established to foretell that its aim is likely to be fulfilled. In other instances, again, complete fulfilment is inconceivable: if, for instance, the aim of the foundation is to contribute to the care of sick persons, the aim will never be accomplished. Between these extreme cases lie those in which the aim has been achieved owing to changes in conditions which the founder could not take into account.

When the possibility of complete fulfilment of the aim is already envisaged at the time when the foundation is established, the starting point may be chosen that the foundation shall be dissolved after the aim has been achieved. The dissolution would then most naturally be effected by virtue of sec. 18, subsec. 1, of the Foundations Act. The "specific precondition" for continued activity would be that the assets can be used to promote the appointed aim. A different evaluation should obviously be accorded to those cases in which the founder did not take into account the possibility of achieving the aim by other means and so the foundation was not established subject to the express precondition that the assets could continue to be used to further the original aim. The "unexpected" achievement of the aim would then in such cases create proper preconditions for amending the statutes, not for dissolving the foundation.

b. There are very few cases in which permission for dissolution of a foundation has been applied for on the ground that achievement of the aim has become *impossible.*

> The aim of the Adolfina and Juhana Hagan Foundation, entered in the Register of Foundations in 1938, was to exercise charity, etc., in the commune of Ruskeala. After this area had been ceded to the Soviet Union, permission to dissolve the foundation was requested on the ground that the aim could not be realized. The Ministry of Justice gave its assent through its decision of Feb. 5, 1948, no. 2949/91 B. Oik.m. 1947.

The act, however, specifically mentions impossibility of achievement of the aim as a precondition for change, not for dissolution.

c. Another minor group is that where the cases concerned are characterized by the *futility* of supporting the aim.

> The Foundation of the Hällström Family was entered in the Register of Foundations in 1934. Its aim was "(a) by occasional subsidies to support such members of the family as through no fault of their own, e.g. owing to advanced age, sickness or an equivalent circumstance, are suffering economic distress; (b) to give low-interest study loans to talented and promising family members without means of their own; and (c) in exceptional cases to take into its care and maintain such graves of members of the family as would not be taken care of by close relatives of the deceased and which therefore might fall into neglect". In 1968 an application was filed with the Ministry of Justice for dissolution of the foundation. The reason was given that there had been no persons among the members of the family in need of occasional succour or of study loans. Furthermore, the amendment of the Foundations Act of 1964 had recently, in the case of this foundation, resulted in placing the members of the family belonging to the board and their close relatives in a less favourable position than other members, since under the act as amended loans could no longer be granted to members of the board or to their close relatives. For the foundation's third purpose, the care of graves, money had been assigned on only two occasions during the entire existence of the foundation. The application stated that the agreement of the members of the family to dissolution had been obtained. The Ministry of Justice gave its permission for dissolution by its decision of May 3, 1966, AD. no. 73/153 Oik.m. 1966. The assets of the foundation were ordered to be assigned to a family association which had been formed.

It is clear that in our exemplary case none of the alternative aims enumerated required support. Since, however, there were still assets left in the foundation, what should have been done in the first place, according to secs. 17 and 18 of the Foundations Act, was to try to rectify the situation of the foundation by altering its aim. It would presumably have been possible to do this by, e.g., assigning to the foundation the new aim of supporting the activities of the family association to which the assets were transferred. In this manner, at least, the group of potential beneficiaries would obviously have remained the same despite the change. But a change of this kind would not have been rational: by dissolving the foundation the creation of a second organization serving approximately the same aims was avoided. Thus there is no reason to dispute the expediency of the decision.

d. A fairly large number of foundations, in all 22, have applied for permission to dissolve on the ground that the foundation was no longer needed for its aim: *sufficient care was being taken of the aims even without support from the foundation.*

The aim of the Kuoppala Library Foundation was to maintain a library in a certain primary-school district. The foundation was entered in the Register in 1931. Application for permission to dissolve was filed in 1958 because at that time the library was being financed by the municipality, and consequently money from the foundation was no longer needed for carrying out the aim. The Ministry consented to the dissolution by decision of Nov. 17, 1958, AD. no. 251 b/172 Oik.m. 1958.

In 1949, the Aline Grönberg Foundation for Aid to Musicians was entered in the Register; it had as its aim to give economic aid to members of the Turku Municipal Orchestra. In 1970, an application for permission to dissolve the foundation was made on the ground that "in recent years the legislative measures which have influenced the improvement of the citizens' social security have rendered it unnecessary to maintain the foundation". The Ministry gave its assent to dissolution by decision of Dec. 23, 1970, AD. 709/266–1970.

In the exemplary cases cited above the state and municipality had assumed responsibility for the duties previously devolving on the foundation. These cases, too, would appear to fall under sec. 17, subsec. 2, of the Foundations Act in that adaptation to changed circumstances should in the first place have been effected by altering the aim.

In some of the dissolution situations occurring in the present group, the residual assets of the foundation were assigned to a foundation, corporate body or the like, furthering equivalent aims. We are here concerned with a kind of substitute for the process of merging, with "quasi-amalgamation". The provisions of the Foundations Act do not appear to give their support to such a procedure. With the benefit of hindsight it might be contended that the possibility of altering the aim would have been by-passed without good reason. It is obvious, however, that considerations of expediency have played a significant role in the decisions in question. For instance, two foundations serving the same aim may, when merged, pursue that aim more efficiently than would the two bodies operating independently. Moreover, in the latter case the available means would be further reduced by higher administrative costs.

e. In some instances, the *choice* of a foundation as the *mode of realization* of a given aim appears to have been *precipitate:* other alternatives have not been adequately studied. In some cases, it was only after the foundation had been entered in the Register and its activities had commenced that the drawbacks of this form of organization in comparison with another organizational model were observed. The dissolution of eight foundations seems to have been brought about by causes of this kind.

The Ainola Residential School Foundation was dissolved by decision of the Ministry of Justice on June 24, 1964, AD. no. 364/213 Oik.m. 1964. The aim of the foundation had been to take care of the education of destitute orphans by establishing a special residential school on a plot of land to be purchased from the City of Helsinki. After it had proved impossible to increase the assets sufficiently to carry out this aim, the founders founded an association to further the same cause. It appears from the application for dissolution that the foundation's initial capital had been altogether inadequate in view of the aim, and outsiders were not willing to support *activities pursued under the form of a foundation.*

The Foundation of Pianist Astrid Joutseno was entered in the Register in 1965 and dissolved by decision of the Ministry of Justice on June 16, 1969, AD. no. 327/64 Oik.m. 1969. The aim of the foundation was to give financial support to students of music. It was stated in the application for dissolution that the assets of the foundation were so minimal that even in the future the foundation would only be able to distribute, annually, at the most 3,500–4,000 Fmk in the form of one or two scholarships. Since the board of the foundation was appointed by the Finnish Cultural Foundation, which also took care of the foundation's disbursements, the foundation considered that a legal but not a real change in the operation of the foundation would be involved if its activities as an independent foundation were suspended and the activities were continued under the aegis of a non-independent foundation, i.e. a fund bearing the donor's name, which would implement the original aim in association with the Finnish Cultural Foundation.

In the first exemplary case it had become evident in practice that those who were willing to give funds for furthering the foundation's aim would also have wanted a greater say in respect of the use of assets than was implied by the form of the foundation. In the second example those in charge of the foundation's administration considered the form of an independent foundation to be too unwieldy in view of the restricted economic importance which the foundation would have. In these and other similar cases dissolution meant in actual fact a rectification necessitated by erroneous assumptions at the time of establishment.

5. *Other decisions for dissolution made on the basis of "disappearance of preconditions"*

Outside the groups specified above, there remain eight cases in which disappearance of preconditions was given as the reason for the wish to dissolve. For obvious reasons it is not possible to present these cases through examples. The group includes, e.g., two foundations which each maintained an institution and were taken over, together with their assets and liabilities, by the state. Further, we find one foundation two of whose board members had been convicted of criminal acts, whereupon the other

board members considered the foundation to have lost all its good will and therewith its possibilities of continued activity. In the case of another foundation its "independence" came as a surprise to its own board, the foundation having been operated for thirty years as if it were merely a fund belonging to a certain association.

It will be seen that this particular group contains exceptional dissolution situations. The supervisory authority was compelled to stretch the frame imposed by statutory law rather more drastically than usual. In view of their atypical nature, the decisions rendered do not seem to give occasion for any more searching analysis or for conclusions.

6. *Dissolution where alteration of aim proves impossible*

It appears that only once has the Ministry of Justice expressly based its dissolution decision on sec. 18, subsec. 2, of the Foundations Act, i.e. on the circumstance that *in an alteration-of-aim situation the alteration could not be carried out.* There are, however, a few cases in which difficulties of altering the aim were invoked by the foundation as a ground for applying for dissolution.

> The foundation called Building Foundation of the Oulunkylä Home Guard and Lotta-Svärd Association was established and registered in 1939. The aim of the foundation was to procure a building for the activities of the associations named (both of them units of the voluntary defence organization subsequently disbanded pursuant to provisions of the peace treaty concluded after the war). In 1944 permission was applied for from the Ministry to dissolve the foundation "for reasons appearing from the documents". The documents attached to the application merely show that a unanimous decision had been made to dissolve the foundation named above and at the same time to establish the Oulunkylä Sports Building Foundation. The Ministry of Justice granted permission to dissolve the foundation by its decision of Nov. 11, 1944, AD. no. 832/180 Oik.m. 1944, basing this decision on sec. 18, subsec. 2, of the Foundations Act.
>
> The Lautela Disabled Veterans' Home Foundation was entered in the Register in 1944. Its aim was "to aid disabled veterans from the city of Turku and from its vicinity by providing for them a home and in connection therewith a means of livelihood, among other things by providing for them an opportunity to receive vocational education". At first a farm had been purchased with funds of the foundation, but after the war its buildings had been disposed of by the organization for the care of persons displaced from the ceded areas. When the buildings were released from this use, vocational training of disabled veterans had already been organized by other bodies. Later the farm was sold and the proceeds were applied towards subsidies. In 1970 the board of the foundation applied for permission to dissolve the foundation on the ground that "a condition has arisen as referred to in sec. 17, subsec. 2, of the Foundations Act. The use of assets for the aim provided for in

> the statutes is, if not altogether impossible, at least futile within the framework of the foundation. To use the foundation's assets for another purpose than that of aiding disabled veterans is not possible without going against the donor's wishes. To change the statutes in this respect is therefore also impossible." Permission for dissolution was granted by decision of the Ministry of Justice on Sept. 14, 1970, AD. 306/199–1970.

The first example quoted above is the sole case in which the Ministry based its decision on sec. 18, subsec. 2, of the act. Yet in the case in question none of the circumstances envisaged in the provision cited (lack of funds, impossibility, being contrary to law, etc.) would seem to have been present. On the other hand, if the foundation had continued its activities, such a situation would very soon have arisen. On the very next day after the foundation was dissolved, the act repealing the earlier legislation on the Home Guard was passed. The conclusion thus seems to be that this decision for dissolution, too, is *sui generis*.

In the second exemplary case cited here, the board of the foundation considered an alteration of aim to be impossible. When the Ministry adopted the same view, its attitude was presumably influenced by the fact that the assets of the foundation had become so restricted that it would have proved difficult to find a new aim. In this case, too, the Ministry again justified its decision to grant permission for dissolution in a manner already familiar to us: by pointing to a disappearance of preconditions.

7. *Rejected dissolution applications*

The *rejections* of dissolution applications might be expected to throw light on demarcation problems. However, such hopes are doomed to disappointment, for decisions of this kind are extremely rare. Presumably their small number (three cases all told) is partly due to the fact that quite often the application for dissolution is filed only after the matter has been discussed with the supervisory authority and the attitude likely to be taken by the Ministry has been ascertained.

> A foundation called the Aamunkoitto Orphans' Home and Residential School was established and registered in 1945. The aim was defined as "the furtherance of the education of Christian-minded citizens". In 1953 it was observed at a meeting of the foundation's board that "in our opinion the foundation has throughout its existence failed to meet the expectations placed on it, and it has not been able to establish the institutions mentioned in its statutes, and since in our opinion the foundation has no possibilities of doing this in the future either, we propose that the foundation shall be dissolved as failing to meet its purpose [...]". The dissolution application was dispatched to the Ministry of Justice. After some time one of the founders wrote to the

Ministry, opposing the dissolution of the foundation on the ground that there was no due cause. The Ministry of Justice gave its decision on Sept. 30, 1954, nos. 354 and 610/91. B. Oik.m. 1954: "Upon presentation this day of this application at the Ministry of Justice, the Ministry has rejected the application because no legal cause for the dissolution of the foundation has been shown."

The Niskamäki Youth and Sports Building Foundation was entered in the Register in 1965. In the autumn of 1971 the board of the foundation simply notified the supervisory authority that the foundation had been dissolved. The Ministry treated this notification as an application for dissolution and rendered a decision rejecting the application on the formal grounds that the foundation had not enclosed with the other documents the requisite copies of its balance sheets, reports on its activities, and auditor's reports.

In our first exemplary case the primary ground mentioned in the dissolution application was that the foundation had not so far been able to achieve its aim and in the board's opinion would never achieve it. However, no reference was made in the application to a lack of means on the part of the foundation, or to any disproportion between the aim and the assets. No evidence of the foundation's alleged inability to realize its aim was presented. Thus, it seems obvious that the application was rejected above all on the ground of insufficient evidence.

The second example is again a case *sui generis*. The board of the foundation failed to follow the *permission* procedure prescribed by the act. The Ministry, for its part, had no possibility of granting permission in the absence of the accounting and other documents required for the decision.

IV. CONCLUSIONS

A. *Sec. 18, Subsec. 1, of the Foundations Act— a General Formula for the Preconditions for Dissolution*

It is submitted that the foregoing presentation of decisions rendered by the Ministry of Justice shows that the established practice in Finland is not consistent with the construction which follows from a conventional study of the dissolution provisions, taking into account not only the wording and structure of the provisions but also the *travaux préparatoires*. A discrepancy is evident in respect of that ground for dissolution which in the present study is referred to as "disappearance of prescribed preconditions" and on the basis of which the great majority of dissolution permissions were given. It will thus be understood that the "given preconditions" mentioned in sec.

18, subsec. 1, have been very broadly interpreted, whereas a study of the preparatory material of the act indicates a rather narrow conception of the term. It should be noted that the "father" of the Finnish Foundations Act, Ilmari Tawaststjerna, in his explanatory memorandum on this provision spoke of a *cancelling condition* included in the foundation deed.[9]

In administrative practice, the Ministry has resorted to the provision contained in sec. 18, subsec. 1, in a rather motley assortment of cases. In fact, the wide range of variation of the cases in which it was applied tends to suggest the conclusion that in the hands of the authorities (contrary to what the legislators planned) this provision has become a general formula for the preconditions for dissolution. With some exaggeration it may be said that permission for dissolution is granted whenever adequate preconditions for continued activity of the foundation as such seem to be lacking in the opinion of the board of the foundation and in that of the Ministry of Justice. In consequence of this expansive interpretation the scope of the alteration-of-aim provision has, in its turn, been narrowed. Since it has been held a sufficient cause for dissolution that the foundation is no longer needed for its original aim or that its aims cannot be furthered under changed conditions, little room has been left for the alteration of aim. This also accounts for the fact that there has been hardly any need to rely on the provision on dissolution as a means secondary to the alteration-of-aim provision, i.e. sec. 18, subsec. 2.[1]

What, then, has led the supervising authority to give the provision in sec. 18, subsec. 1, a range of application considerably wider than was intended when the act was formulated? One of the causes, probably the most significant one, is palpable enough. The examples of cases of dissolution presented above show that the most common cause of dissolution was the exhaustion or paucity of the foundation's assets. In addition to these specific cases, reference has also been made to meagre assets in many of those cases where the primary reason for submitting an application for dissolution of the foundation was stated to be the impossibility of the aim, uselessness, etc.

[9] Ilmari Tawaststjerna, "Mietintö ja lakiehdotus säätiöistä" (1.9.1921), *Oikeusministeriön asiakirjavihko* AD. KN:o 25/315 Oik.m. 1957.

[1] It is interesting to observe that in Sweden the aim for the use of a foundation's assets has been altered in, *inter alia,* the following cases (see *Proposition* 1972: 8):
- the aim is realized in another way, e.g. from public funds;
- there are no longer any beneficiaries;
- support of the aim is useless for some other reason, e.g. because there is no demand;
- the assets are not sufficient for achieving the aim;
- the assets are appreciably in excess of what is needed to achieve the aim;
- the aim is obsolete or useless in present-day social conditions.

The form of transmutation resorted to in Finland in equivalent cases has not been alteration of aim, but dissolution.

Although according to the wording of the act paucity of assets compared with the aim of the foundation is not an immediate ground for dissolution, but rather one of the preconditions for an alteration of aim, it is understandable that no energetic effort will be made to find a new aim for a foundation if economic difficulties have been met in accomplishing the original aim. In the course of struggling with such difficulties, those in charge of the foundation's affairs often lose all faith in the activity and feel no desire to carry it on.

It would thus seem that the commonest cause of dissolution can be found in the structural factors of the Finnish foundations. In the past, foundations have tended to be established with inadequate capital, and this is possibly still occurring (in spite of the 1964 amendment of the act).[2]

It is obvious that, when the Foundations Act was prepared, insufficient attention was paid to the prevailing paucity of foundation assets and to the subsequent problems regarding change and dissolution. The formulation of the provisions largely followed the models provided for by the norms of other countries, and in earlier times the structural characteristics and economic preconditions of our Finnish foundations received less attention. The legislators, who were inspired by the experience of other countries, emphasized the primary character of alterations of aim as a means of transmutation, failing to take into account that the problems of Finnish foundations are more often connected with paucity of assets than with uncertainty as to how the assets should be used under changed circumstances.

The fact that dissolution of foundations is more frequent than are attempts to alter their aim is, of course, also partly attributable to the circumstance that those responsible for administering the foundation often do not believe that any permanent results will be obtained through a change of aim, and therefore at once proceed to file an application for dissolution of the foundation. This development may, on the other hand, have been encouraged by the loose practice adopted by the Ministry. A foundation board aware of the fact that permission for dissolution is usually granted on the strength of the "general formula" of sec. 18, subsec. 1, will hardly even take the possibility of an alteration of the aim up for serious consideration. It is also obvious that the dissolution of a foundation is not always due to the board's own initiative. There would seem to be a fair number of instances where the Ministry, in connection with its supervision of accounts or otherwise, has observed that the foundation has

[2] It was then made a precondition for obtaining permission to establish a foundation that the assets which would accrue to the foundation should not be too small or in obvious disproportion to the aim of the foundation.

not been active for a long time and has therefore recommended the filing of an application for dissolution.

B. *Some Aspects of the Relation between Alteration of Aim and Dissolution of the Foundation*

Dissolution has been characterized above as an exceptional means of transmutation and the one which is most drastic from the foundation's point of view. But the difference, e.g., between an alteration of aim and dissolution may perhaps not be as great in all cases as the terminology employed might suggest. It is true, of course, that the act of dissolution brings the legal existence of the foundation to an end, but, if at the time of dissolution the foundation has assets, these will continue to be used even after the dissolution towards a given aim. The dissolution may in fact, in certain instances, imply increased guarantees for the accomplishment of the aim. This may occur, for instance, in the so-called quasi-amalgamation cases mentioned above. In such instances, most probably, the dissolution has brought about an improvement in the preconditions for activity: the pooling of assets within the framework of one organization has enabled the aim to be pursued more efficiently than before.

There is no doubt that from the founder's point of view dissolution of the foundation may appear to be an extreme measure, one resorted to only after other remedies have been exhausted. In quite a number of cases one of the motives for establishing the foundation has been the founder's desire to erect a monument to himself, though of course there may be other reasons as well. Evidence of this is to be found already in the names of the foundations, which are frequently connected with a certain person. If the foundation has been intended in the first place to perpetuate the founder's memory, then the dissolution of the foundation is a substantially more negative measure than is alteration of its aim. It is believed, however, that as a rule the founder is more interested in the achievement of the aim which he has set for the foundation than in the preservation of a monument to himself. If this is the case, the difference existing in principle between an alteration of aim and dissolution cannot be held to be very substantial: in both cases an attempt should be made to use the foundation assets to further aims which are close to the original aim.

It is hard to appraise whether from the beneficiaries' point of view the dissolution of the foundation is a means to which one should only resort in an extreme contingency, when the possibilities of altering the aim have been exhausted. In respect of this group, too, there are no major differences between the cases. It is provided that both in the alteration-of-

aim situation and in that of dissolution, when a new purpose is found for application of the funds, care should be taken that the circle of beneficiaries remains unchanged.[3]

The administrative bodies of the foundation may consider the dissolution of the foundation as a release from obligations which have become onerous. Especially if the foundation's assets are relatively minor and the board is compelled to observe that it is hardly possible to promote, with these assets, the aims that the founder sought to achieve, dissolution of the foundation may appear more appropriate to those in charge of its administration than an alteration of aim, which in the particular circumstance may perhaps rectify the situation for a brief period only.

From the viewpoint of the *state's fiscal interests,* dissolution might seem to be preferable to the alternative of a change of aim. It should be noted that sec. 19, subsec. 2, of the Foundations Act contains the following provision:

> If the foundation, after its debts have been paid, is left with residual assets and no provision as to their use has been made in the statutes, these assets shall go to the state, which shall without delay assign them to be used to further an aim closely associated with the foundation's activities.

However, such a taking over of assets by the state has never actually occurred. By no means all founders are cautious enough to prescribe in the statutes what shall be done with the foundation's assets in the event of its dissolution: the foundation is believed to be eternal. But the question has to be faced when plans for dissolution are being made. For one reason or another, the last administrative bodies of foundations are unwilling to leave the funds in the hands of the state. The procedure applied in practice is in fact that immediately prior to the dissolution (and actually sometimes in the application for dissolution itself) the supervisory authority's consent is requested to an amendment of the statutes whereby a provision concerning the use of the residual assets is added to the statutes. In this manner, the practice adopted with regard to foundations has eliminated a norm which is obviously felt to be unacceptable.

C. *Recommendations*

In the foregoing review of the practice applied by the administrative authority and in the comments on the decisions made, it was observed in several connections that expediency was taken into account to a considera-

[3] See, for a more detailed discussion, Pirkko-Liisa Aro, *Säätiön lakkauttamisen edellytykset,* Hämeenlinna 1970, pp. 50 ff.

ble extent. Accordingly, there is certainly no reason to demand that those making the decisions shall remain within the close confines indicated by the letter of the law. It seems desirable, rather on the contrary, to investigate the possibilities for the creation of new regulations whereby the structural factors of foundations and the causes which in actual fact have led to dissolution would be taken into account to a greater extent than they are at present.

The law as it actually stands provides that the inadequacy of assets is a precondition for alteration of aim, not for dissolution. However, experience has taught that in cases of inadequate assets the finding of a new aim for a foundation is not only a laborious task but is also frequently inexpedient, implying merely a temporary solution to the difficulties. It would therefore be appropriate to consider the adoption of inadequacy of assets as an explicit ground for dissolution. This solution would also be consistent with the precondition to which the granting of permission to establish a foundation is now subject: that the assets to be assigned to the foundation shall not be so small that sufficient prerequisites for its establishment cannot be considered to exist.

The so-called quasi-amalgamation cases, which were touched upon above, raise the question whether it would be proper to consider the inclusion in the act of such provisions as would enable foundations to be merged. The Register comprises numerous foundations with identical aims and spheres of activity, but with assets which by themselves are inadequate for an efficient promotion of the aim. In such instances, separate administration may occasionally appear unnecessary or even detrimental. It might perhaps be possible, by merging the foundations, to reduce the administrative costs and burdens and, above all, to gain an advantage through the joint investment of the funds; in fact, this might also enable the assets to be used more amply and more consistently to further the aim of the foundations.

What complicates the matter is the fact that the creation of a separate body is an indispensable part of the founding procedure, without which no independent foundation can be established and which usually has to be considered significant from the founder's point of view. Personal considerations important to the founder, such as his particular trust in certain persons, may be strongly in favour of the preservation of separate administration.

The possibility of amalgamation has been taken into consideration in the case of pension foundations. According to the provisions in sec. 24 of the Act on Pension Foundations[4] amalgamation has to be effected with the

[4] Pension Foundations Act, Dec. 2, 1955/469.

supervisory authority's permission. The matter must be publicized in the Official Gazette and made known to the employees within the foundation's sphere of activity as well as to the recipients of pensions and other beneficiaries. Such notification must contain information to the effect that anyone who wishes to lodge an objection to the application has to do so within a specified time. Thus, in the amalgamation of pension foundations, the requirements proper to mergers in general are apparent: compatibility of type, control by authority, and the protection of third parties' rights.

In framing any future rules concerning the possibility of merging independent foundations one should obviously start from similar fundamental principles. As regards the requirement of type compatibility, the principle of unchangeability of a foundation's aim contained in the Foundations Act would obviously require more restrictive conditions as a starting point: they should comprise compatibility of aims, in addition to compatibility of type. Therefore a foundation taking over another foundation should have an aim either congruent with that of the foundation to be merged in it or comprising that aim side by side with others.

The amalgamation could take the form either of a merger or of a combination on a basis of parity. It is evident from the foregoing review of decisions that the dissolution procedure as an intermediary step comprises only mergers. However, it would obviously be useful to create possibilities for both types of amalgamation.

The exercise of public control and the duty of preventing violations of the rights of third persons in connection with the merger would devolve on the supervisory authority for foundations. Furthermore, that authority should take care that the rights of the foundation's beneficiaries would not be endangered, that the founder's wishes would be implemented in, and also after, the merger and that the non-economic benefits which are important to him would be preserved.

In any plans for changes concerning the legal entities created by private generosity, it should however be kept in mind that the extensive powers invested in the authority may cause the assets, earmarked in the form of a foundation for aims of public interest, to be diverted to other purposes, which may perhaps be less desirable from the point of view of society at large.