

Procedural and factual background:

The Presiding Judge of the Trial Panel, with decision SCC-08-0262 dated 19 November 2009, rejected the Applicant's request for assistance in translation and exemption from payment of court fees. The decision reads that the Applicant's financial situation cannot be examined because he has not provided any document on his financial situation as foreseen by Article 25.8 of UNMIK Administrative Direction (AD) 2008/6 and Article 173 of the Law on Contested Procedure.

On 10 December 2009 the Applicant (later the Appellant) filed a submission regarding the aforementioned decision. He is represented by a lawyer.

On 19 January 2010 the Appellate Panel ordered the Appellant to clarify if the submission filed with the SCSC on 10 December 2009 is an appeal against the decision of the Presiding Judge on the rejection of the request for assistance in translation and exemption from payment of court fees, to submit a copy of the decision against which the appeal is brought and a certified copy of the power of attorney.

On 22 February 2010 the Appellant partially complied with the order. The Appellant clarified that he appeals the decision of the Presiding Judge by which his request for assistance in translation and exemption from payment of court fees was rejected. Anyhow the Appellant did not provide a copy of the decision against which the appeal was brought and neither the power of attorney certified by the competent authorities.

Legal Reasoning:

The appeal is inadmissible.

Section 61.4 of UNMIK AD 2008/6 stipulates that upon receipt of the appeal, the SCSC shall review it to determine whether it conforms to the requirements of the AD. If the SCSC decides that the appeal does not satisfy these requirements, it

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shall order the appellant forthwith to supplement his/her appeal accordingly and within a reasonable time, failing which the appeal shall be rejected.

Further, Section 60.2 of UNMIK AD 2008/6 stipulates that the decision of the Trial Panel against which the appeal is brought shall be attached to the appeal.

Section 24.4 of UNMIK AD 2008/6 stipulates that the SCSC may require to submit a certified copy of the power of attorney.

The Appellant did neither provide a copy of the decision against which the appeal is brought nor a certified copy of the power of attorney. Thus the appeal has to be dismissed as inadmissible.

Court fees

Based on Section 57.2 of UNMIK AD 2008/6 the Special Chamber issued Additional Procedural Rules regarding Court Fees, in force from 10 March 2010. They read as follows:

'Section 10 of Administrative Instruction No. 2008/2 on Unification of Court Fees of the Kosovo Judicial Council of 27.11.2008, concerning "The Court Fee Tariffs", is hereby – with the following specifications – declared to be applicable for the court proceedings in front of the SCSC.

Section 10.9 till Section 10.23 are – mutatis mutandis – applicable for the appeals procedure in front of the Trial Panel and in front of the Appellate Panel.

As a clarification, Section 10.11 is also applicable for the procedure governing the appeal against 2nd instance decisions of the Trial Panel.

(...)

These Additional Procedural Rules enter into force on 10 March 2010 and are valid until 31 December 2010.'

The court fees in both instances consist on the one hand of a fee for the filing of submission(s), on the other hand of a fee for the issuance of (a) decision(s).

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As the decision in first instance was rendered before the day of entry into force of the above mentioned rules, only court fees for the appeals procedure are to be dealt with here:

The amount of the fee for the filing of the appeal as governed by Section 10.11 of the Administrative Direction of the Kosovo Judicial Council No.2008/2 on Unification of the Court Fees ("ADJ") is 30 Euros.

Section 10.15 of ADJ determines that for the decision for dismissing claims (as inadmissible) only half the amount of the fee as ruled in Section 10.1 ADJ (which on principle bases the court fees on the value of the claim) has to be paid, up to a maximum of 30 Euros. This applies to decisions in second instance, too (Section 10.21 ADJ refers to Sections 10.12 to 10.18 ADJ). Section 10.15 in conjunction with Section 10.21 covers decisions in second instance dismissing appeals as inadmissible, as well as decisions on appeals against first instance decisions that do not touch upon the merits of the case.

Unless the value of the claim is proven less (in first instance by the claimant, in second instance by the appellant) according to Section 10.1 in conjunction with Sections 10.15 and 10.21, the court fee is 30 Euros.

In the case at hand, neither in first nor in second instance statements as to the value of the claim were made. The court fee for the decision in second instance therefore is set to 30 Euros.

As a consequence, the following court fees for the appeals proceedings finally apply:

Court Fee Tariff Section 10.11 (filing of the appeal)	30 Euros
Court Fee Tariff Section 10.15 in conjunction with 10.21 and 10.1 (decision in second instance)	30 Euros
Total	60 Euros

These court fees are to be borne by the Appellant.

Richard Winkelhofer, EULEX Presiding Judge signed

Torsten Frank Koschinka, EULEX Judge signed

Eija-Liisa Helin, EULEX Judge signed

Tobias Lapke, EULEX Registrar signed