



Arbitration CAS 2008/A/1609 Mustafa Ozkan v. MKE Ankaragucu Spor Kulubu, award of 20 December 2012 (operative part of 21 December 2011)

Panel: Mr George Abela (Malta), President; Mr Goetz Eilers (Germany); Mr Bernhard Welten (Switzerland)

Football

Early termination of the employment contract

Counterclaim based on the 2004 CAS Code

Just cause

1. Based on article R64.2 of the 2004 CAS Code a respondent filing a counterclaim has to pay a separate advance of costs. If the respondent does, however, not pay its share of the advance of costs, its counterclaim is deemed withdrawn based on article R64.2 of the 2004 CAS Code.
2. When a substantial amount of salaries remains unpaid and the player has complied with the “*legal form and term requirements*” provided for in the regulations of the national association concerned, he has a just cause for terminating his employment contract with his club and is not liable to pay any compensation to the latter.

I. PARTIES CONCERNED

- 1.1. Mustafa Ozkan (hereinafter referred to as the Appellant), is a professional football player. The Appellant is a member of the Turkish Football Association, which, in turn is affiliated to the Federation International de Football Association (hereinafter FIFA).
- 1.2. MKE Ankaragucu Sports Club (hereinafter referred to as the Respondent) is a football club in Turkey affiliated with the Turkish Football Federation, which in turn is affiliated with FIFA.
- 1.3. The Turkish Football Federation (hereinafter referred to as the Intervener or the “TFF”) is the organizing body for football in Turkey. The TFF is established and granted authority for organizing football in Turkey by the Law of Establishment and Objectives of the Turkish Football Federation, Law No. 3813, passed by the Grand National Assembly (the ‘legislature’) of the Republic of Turkey on June 17, 1992, and last amended on November 29, 2007 by Law No. 5719/1 (the ‘TFF Law’).

II. FACTUAL BACKGROUND

- 2.1 The Appellant signed as professional football player two consecutive employment agreements with the Respondent, the first one on 2 August 2006 (with a fixed period of 1 year, ending on 31 May 2007) and a second one on 10 August 2007 (with a fixed period of 1 year, ending on 31 May 2008).
- 2.2 When the Appellant was injured he went to Munich to see Dr. Müller Wohlfahrt, a well known specialist for football injuries, who treated the Appellant during three days (7 August to 9 August 2007).
- 2.3 After the Appellant's return to Turkey, he signed on 10 August 2007 a second employment agreement with the Respondent, as mentioned before. The beginning of this contract is mentioned as being 2 July 2007. The expected end date was 31 May 2008.
- 2.4 On 26 December 2007 the Appellant requested a termination of the agreement, as the Respondent was allegedly in arrears with the payment. A dispute on the Appellant's salary began.
- 2.5 On 6 February 2008 the dispute was resolved at first instance by the Board of Directors of the TFF, whereby the Appellant was awarded salary arrears in the sum of YTL 93.766, as well as compensation in the sum of YTL 150.000 for breach of contract by the Respondent. Both the Appellant and the Respondent appealed this Decision to the Arbitration Board of the TFF.
- 2.6 On 10 April, 2008, the Arbitration Board of the TFF ruled that the termination of the contract by the Appellant was justified, that the Appellant was entitled to the sum of YTL 238.500 in outstanding salary and the Respondent should pay compensation in the sum of YTL 100.000 for breach of contract. The decision was notified to the Appellant on 11 July 2008.

III. SUMMARY OF THE ARBITRAL PROCEEDINGS BEFORE THE CAS

- 3.1 On 18 July 2008 the Appellant filed a Statement of Appeal challenging the decision rendered by the Arbitration Board of the Turkish Football Association (TFF) Number 2008/132 dated 10 April 2008 (the Decision). In its statement of appeal, the Appellant appointed Mr Goetz Eilers as arbitrator.
- 3.2 By means of a letter dated 23 July 2008 the Counsel to the CAS acknowledged receipt of a statement of appeal filed on 18 July 2008 with the CAS on behalf of Mr Mustafa Ozkan against MKE Ankaragucu Spor Kulubu with respect to the Decision. Pursuant to article S20 of the Code, the present arbitration has been assigned to the CAS Appeals Division and shall be dealt with according to article R47ff. of the Code of Sports-related Arbitration (the "Code").

- 3.3 By means of the same letter dated 23 July 2008 and according to R51 of the Code, the Appellant was required to file an appeal brief with the CAS stating the facts and legal arguments giving rise to the appeal.
- 3.4 By means of a letter dated 23 July 2008, the Turkish Football Federation, pursuant to articles R54 and R41.3 of the Code, was invited to participate as a party in the present arbitration and file an application with the CAS together with the reasons therefore, within the time limit set for the Respondent to file its answer to the appeal brief, having the same content as an answer as described under article R55 of the Code.
- 3.5 On 29 July 2008, the Appellant filed its appeal brief in accordance with art. R51 of the Code. In addition to the Decision he requested a further YTL 20,000 in outstanding salary and a compensation for breach of contract in the amount of YTL 335,000.
- 3.6 Pursuant to article R55 of the Code, by means of a letter dated 30 July 2008, the Respondent was invited to submit to the CAS an answer containing a statement of defence, any defence of lack of jurisdiction, any counterclaim, any exhibits or specification of other evidence upon which the Respondent intends to rely, including the names of the witnesses and experts whom it intends to call.
- 3.7 On 11 August 2008 the Turkish Football Federation filed its Answer, raising, amongst others, a formal objection on the lack of jurisdiction of CAS over the issue under examination.
- 3.8 On 19 August 2008, the Respondent informed the CAS that it did not intend to pay the requested advance of costs.
- 3.9 By means of a letter dated 20 August 2008, in accordance with art. R41.3 of the Code, the CAS invited the parties to express their position on the participation of the TFF in this procedure on or before 27 August 2008. The parties were informed that if they do not express their position within the deadline, it would be understood that the Appellant and Respondent agree with such intervention.
- 3.10 On 21 August 2008, the Respondent filed its answer to the appeal and included in its answer a counterclaim against the Appellant.
- 3.11 On 21 August 2008, the CAS informed the Appellant that Mr. Türker Arslan, arbitrator appointed by the Respondent, was a former member of the TFF Executive Board. The CAS set the Appellant a time limit of seven days to challenge the appointment of Mr. Türker Arslan as arbitrator. With letter of 26 August 2008 the Appellant challenged the nomination of Mr. Arslan as arbitrator.
- 3.12 By means of a letter dated 1 September 2008 the parties were invited to inform the CAS Court Office whether their preference is for a hearing to be held in this matter or for the Panel to issue an award solely on the basis of the written submissions.

- 3.13 On 8 September 2008 the Appellant pointed out that both parties agree to the CAS having jurisdiction in this case. Regarding the counterclaim filed by the Respondent the Appellant is of the opinion that it is considered withdrawn as the Respondent did not pay its advance of costs.
- 3.14 By letter of 9 September 2008, the CAS confirmed that Mr. Arslan has decided to withdraw from this arbitration procedure and the Respondent was requested to appoint an alternative arbitrator within one week.
- 3.15 On 17 September 2008, the Respondent nominated Mr. Bernhard Welten as a new party appointed arbitrator.
- 3.16 By means of a letter dated 29 October 2008, the parties were informed that the Panel called upon to resolve the litigation opposing Mustafa Ozkan and MKE Ankaragucu Spor Kulubu is composed as follows – President: Dr George Abela, attorney-at-law in Valletta, Malta; Arbitrators: Mr Goetz Eilers, attorney-at-law in Darmstadt, Germany and Mr Bernhard Welten, attorney-at-law in Berne, Switzerland.
- 3.17 By means of a letter dated 25 November 2008, the parties were informed that in accordance with Art. R56 of the Code, the President of the Panel decided that there are no exceptional circumstances which would allow the admission of the Appellant’s correspondence dated 28 October 2008 and the President therefore decided to reject the Appellant’s new submission which is not admitted as part of the case file.
- 3.18 By letter of 2 September 2009, the Appellant asked the CAS to proceed with the pending case by first taking a decision regarding the jurisdiction of the CAS and he further objected to the intervention of the TFF in this procedure.
- 3.19 On 6 October 2009, the Panel issued a Preliminary Decision in which it ruled that the CAS had jurisdiction to rule on the appeal filed by Mustapha Ozkan against the decision of the arbitration Board of the Turkish Football Association (TFF) Number 2008/132 dated 10 April 2008. The Panel further established that the request of the Turkish Football Association to intervene and form part of the present proceedings was allowed and that the Panel would proceed in deciding about the merits of the dispute.
- 3.20 On 12 November 2009, the TFF filed an appeal against the Preliminary Arbitral Award on jurisdiction and the TFF intervention of 6 October 2009 to the Swiss Federal Tribunal stating that CAS does not have jurisdiction to hear the present case and requesting the suspension of the CAS arbitration pending the decision of the Swiss Federal Tribunal.
- 3.21 On 10 December 2009, the Swiss Federal Tribunal issued an order suspending the arbitral proceedings until it has rendered its judgment on appeal in relation to the preliminary CAS award of 6 October 2009.

- 3.22 On 22 January 2010, the CAS ordered the suspension of the procedure until the final judgment of the Swiss Federal Tribunal on appeal against the preliminary award of 6 October 2009.
- 3.23 On 22 March 2010, the Swiss Federal Tribunal rendered its decision on the TFF's appeal against the preliminary award of 6 October 2009: the Swiss Federal Tribunal refused to entertain the appeal.
- 3.24 On 3 September 2010, the CAS invited the parties to file their final submissions within 15 days upon receipt of the letter. The Panel asked the Appellant to provide it with the contract(s) signed with the club Antalyaspor (with its relevant translation into English) containing his remuneration for that period, within the same deadline of 15 days.
- 3.25 On 15 September 2010, the Appellant filed its final submission together with a copy of the signed contract with Antalyaspor for the period 24 July 2008 until 31 May 2009 and an English translation.
- 3.26 By letter of 29 September 2010, the CAS invited again the Respondent – as no submission had been filed up to the date of 20 September 2010 – to provide it with its final submissions on or before 1 October 2010.
- 3.27 On 4 October 2010, the CAS informed the parties that the Respondent did not file any final submissions.
- 3.28 In accordance with Article R57 of the Code, after having consulted the parties, the Panel decided not to hold a hearing in this case.

IV. THE PARTIES' SUBMISSIONS

The Appellant

- 4.1 On 18 July 2008 the Appellant filed his statement of appeal against the decision of the TFF Arbitration Board of 10 April 2008 (hereafter "TFF Decision") and asked that he will be paid the amounts of YTL 258'500 (instead of YTL 238'500) for outstanding salaries and YTL 435'000 (instead of YTL 100'000) for compensation/punitive damages.
- 4.2 On 29 July 2008 the Appellant filed his appeal brief in which he gave the reasons for his prayers stated in the statement of appeal. The Appellant challenges the TFF Decision in two points: firstly, he petitions for a further YTL 20'000 in outstanding salary and, secondly, he requests an additional amount of YTL 335'000 as compensation for breach of contract.

The Appellant states that his outstanding salary is composed as follows:

- Signing fee of YTL 130'000;
- Guaranteed salary for August – December 2007: YTL 65'000 (5 x YTL 13'000);

- Match bonuses of YTL 120'000.

From this total amount of YTL 315'000 the Appellant has received only YTL 56'500. Therefore the Respondent owes him a further amount of YTL 258'500 YTL out of which the TFF Decision awarded only an amount of YTL 238'500. The TFF Arbitration Board did not give any reasons for this difference of YTL 20'000. The Appellant assumes that the deduction in the sum of YTL 10'000 could be caused by the contractual penalty charged against the Appellant which relates to his trip to Germany from 7 to 9 August 2007. As the Respondent agreed to this medical trip to Germany no such sanction is justified. This disciplinary fine as well as the other penalties claimed by the Respondent are fully contested by the Appellant. Another explanation for this difference is the bonus payments which were calculated YTL 20'000 lower compared to the Appellants allegations, maybe because the Appellant missed two games when he was injured.

- 4.3 The Appellant claims a total compensation fee of YTL 435'000 and reasons that he should be entitled to at least the salary he would have earned without the occurrence of the breach of contract. His salary payments are composed of:

- Fixed salary for January – May 2008: YTL 65'000 (5 x YTL 13'000);
- Match bonuses of YTL 170'000, but at least YTL 120'000 (compared to August – December 2007).

Therefore the minimum compensation is at least YTL 235'000 – the Appellant mentions an amount of YTL 335'000 which cannot be followed by the Panel; the Panel thinks that this must be a spelling mistake as YTL 65'000 plus YTL 170'000 equals YTL 235'000 and not 335'000 – or YTL 185'000 if taking the same bonus as the Appellant earned in August-December 2007, which is much more than the granted YTL 100'000. In addition to this amount it has to be considered that the breach of contract happened in the “protected period” based on art. 17 FIFA rules and art. 34 TFF provisions. The representatives made thereafter negative comments about the Appellant when he negotiated a new contract with third clubs. The Appellant did therefore not play in any club in the first half year 2008 and lost consequently his chance to be part of the national team for the Euro 2008 in Switzerland/Austria. The Respondent even tried to benefit in producing falsified receipts of the Appellant, showing that he received an amount of YTL 56'500. All this leads to an additional amount of YTL 200'000 due to the Appellant.

- 4.4 On 15 September 2010 the Appellant filed his final submissions and provided its contract with the club Antalyaspor A.S. for the period 24 July 2008 until 31 May 2009. As this contract follows the contractual period with the Respondent (until 31 May 2008) it is not possible to offset any amount. The Appellant further points out that the counterclaims raised by the Respondent are not admissible, as the Respondent failed to pay its share of the advance of costs.

The Respondent

- 4.5 On 21 August 2008 the Respondent filed its answer to the appeal, asked to reject all prayers filed by the Appellant and included itself a counter-claims as follows:
- a compensation of YTL 150'000 for termination of the contract by the Appellant without cause;
 - an excessive payment to the Appellant of YTL 117'941 in the season 2006/2007;
 - two disciplinary fines of YTL 37'000 from the season 2006/2007 and YTL 50'000 based on the Respondent's board decision of 23 October 2007.

The Respondent claims that the unilateral termination of the contract by the Appellant was not justified; the Respondent did not have any outstanding salary payments due to the Appellant, to the contrary, the Respondent claims that it has a claim against the Appellant as mentioned before.

- 4.6 For the season 2006/07 it results a payment in excess to the Appellant of YTL 117'941 and a fine to be set off against the Appellant in the amount of YTL 37'000. The payment to be set off during the 2007/08 season was therefore a total of YTL 154'941.
- 4.7 For the season 2007/08 the Appellant earned based on his contract a fixed salary of YTL 65'000 (5 x YTL 13'000 for August – December 2007) and a bonus of YTL 100'000. The Respondent paid the Appellant a total amount of YTL 56'500 until December 2007.

When respecting the Respondent's claims for the season 2006/07 of YTL 154'941 the Respondent did have a claim for excessive payments to the Appellant of YTL 46'441, by the end of 2007.

- 4.8 Related to the fine of YTL 50'000 the Respondent claims that the Appellant violated "*various provisions of disciplinary regulations, of which one sample is submitted to Turkish Football Federation and prepared by club on 2007-2008 season*". The Appellant was allegedly fined with YTL 50'000. As a proof the Respondent submitted a document with the number 25654 in Turkish. The document was stamped on 25 October 2007. In its submission dated 21 August 2008 the Respondent stated:

"Although one of our club's sportsmen, Mustafa Özkan had warned for various times, he had continued to his below mentioned behaviours and actions.

- a. *He had gone to Germany for treatment without having a permission although his treatment after his injury during the beginning of the season had been performed by Club Health team, and health team did not find this appropriate for him,*
- b. *He seemed unwillingly, angry and unwillingly during practices, camps and games, and had inappropriate actions during competitions and continue a life style inappropriate for professional football player,*

- c. *He did not implement real signature on the payment document, made by club accounting department and via bank to the player himself realized during the audits of the auditors, and although this situation had mentioned to him, he had refused to sign the documents, and act contrary to the goodwill rules”.*

The Respondent stated that the Appellant had violated club discipline regulations permanently and several times. The fine of YTL 50’000 has been reduced to YTL 10’000 by the TFF, but the TFF had no authority to remove the fine.

- 4.9 The Respondent further claims an amount of YTL 150’000 for unrighteous termination compensation.

Turkish Football Federation (The Intervener)

- 4.10 On 11 August 2008, the TFF filed its statement of intervention. It formally objected to the CAS having jurisdiction in this case, as the Appeals Body rendered a final and binding decision, involving only Turkish parties and therefore in a case of a national dimension.

V. CAS JURISDICTION AND ADMISSIBILITY OF THE APPEAL AND COUNTERCLAIM

- 5.1 On 6 October 2009, the Panel decided in a preliminary award that CAS had jurisdiction to rule on the appeal filed by the Appellant and accepted the intervention of the TFF in the arbitration procedure.
- 5.2 The Statement of Appeal of 18 July 2008 was filed within seven (7) days of the receipt of the decision of the Arbitration Board of the TFF, dated 10 April 2008, and therefore – considering the absence of a time limit set by the TFF rules – within the deadline provided by article R49 of the Code; the Appeal is therefore admissible.
- 5.3 In its answer of 21 August 2008 the Respondent included a counterclaim. Further the Respondent already stated to the CAS in its letter of 19 August 2008 that it does not intend to pay the requested advance of costs. Based on article R64.2 of the Code a Respondent filing a counterclaim has to pay a separate advance of costs. As the Respondent did, however, not pay its share of the advance of costs, its counterclaim is deemed withdrawn based on article R64.2 of the Code.

VI. LAW APPLICABLE TO THE MERITS

- 6.1 On the basis of Art. R58 of the Code, the Panel is required to decide the dispute:
“according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has

issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.

- 6.2 In this case, the Panel shall primarily apply the provisions of the TFF Statutes and Regulations and subsidiary Turkish law shall apply.

VII. MERITS OF THE DISPUTE

- 7.1 The Appellant signed on 2 August 2006 his first employment contract with the Respondent for one year, ending on 31 May 2007. Based on the Respondent's pretention the Appellant earned in the season 2006/2007 a total of YTL 347'059 (YTL 100'000 as fixed salary; YTL 247'059 as bonus payment; annex 4 of the Respondent's answer). On this total salary for the season 2006/2007 the Respondent paid an uncontested amount of YTL 465'000 until 30 June 2007. Therefore the Respondent overpaid the Appellant in the amount of YTL 117'941.
- 7.2 The Appellant stated in his letter of 15 September 2010 that it is *“more than remarkable, that Respondent even dares to impose penalties arising from the time of the precedent contract (season 2006/2007) long after it has elapsed ...”*.
- 7.3 For the season 2007/2008 the Appellant signed the contract with the Respondent on 10 August 2007. The total amount to be earned by the Appellant was defined in the contract (see annex 5 of the Appellant's appeal statement) with a maximum amount of YTL 470'000 (YTL 130'000 as guaranteed payment; YTL 340'000 as maximum bonus). Until 26 December 2007, when the Appellant notified the Respondent the termination of the contract for just cause, he would have earned a total bonus payment of YTL 120'000, beside the guaranteed payments of YTL 65'000 (5x YTL 13'000). This is uncontested and the parties further agreed that the Appellant should have received a signing fee of YTL 130'000 when the contract was signed in August 2007. In this respect, contrary to the Respondent's allegation that this signing fee of YTL 130'000 had been paid in the moment of signing the contract and it was confirmed by a notary public, the Panel did not see any such notification in the notarized employment contract of 10 August 2007 (see annex 5 to the answer) or receive any other proof of payment of this amount. On the contrary, the payment overview filed by the Respondent as annex 6 (possibly this document should be annex 8 based on the Respondent's comments to the proofs filed) clearly mentions payments of YTL 58'998 of a total amount due of YTL 315'000 which includes the payment of YTL 130'000 signing fee. In light of the above, the Panel concludes that the Appellant is entitled to a payment for the period until 31 December 2008 of YTL 315'000 (YTL 185'000 plus YTL 130'000 signing fee).
- 7.4 Based on the parties' statements it is uncontested that the Respondent paid the Appellant a total amount of YTL 56'500 until December 2008. This leaves a final remaining amount to be paid to the Appellant based on the contract of 10 August 2007 of YTL 258'500 for the period until 31 December 2008.

- 7.5 The next controversial point that the Panel should address concerns the fines imposed to the Appellant by the Respondent for the alleged infringement of its code of conduct. For the season 2006/2007 the Respondent and the TFF Professional Football Facilities Executive Management in its decision of 6 February 2008 (see annex 6 of the appeal statement) mention a fine of YTL 37'000. This fine is a part of the counterclaim filed by the Respondent and based on its non-compliance with art. 64.2 of the Code this counterclaim is deemed to have been withdrawn; therefore the Panel has no authority to decide on this fine.
- 7.6 For the season 2007/2008 the parties are discussing a possible fine of YTL 50'000, issued by the Respondent on 23 October 2007. This fine relates to the Appellant's trip to a medical doctor in Munich. Even if the TFF Professional Football Facilities Executive Management discussed and finally reduced this fine in its decision of 6 February 2008 (see annex 6 of the appeal statement) the facts are contested and the Panel should decide on this counterclaim of the Respondent; based on article R64.2 of the Code the Respondent's counterclaim is deemed to be withdrawn and therefore the Panel does not have the authority to decide on the alleged fine of YTL 50'000.
- 7.7 Taking into consideration the reasoning contained in the previous paragraphs, the Panel holds that for the season 2007/2008 – for the period until 31 December 2007 – the Respondent shall pay the Appellant a total amount of YTL 258'500.
- 7.8 Article 32 TFF Regulations state that *“Football player has the right to make a termination notification within fifteen days if receivables due to present instruction and signed agreement are not paid within seven days beginning from due dates of receivable”*. Article 33 lit b) TFF Regulations further states that *“Football player which will use his termination right due to provisions indicated in Instruction has to make draft of notification in Notary Public showing Sports Club as collocutor and its obligation to send one copy of said draft notification to Federation for information”*.
- Lit. c) of this article states: *“When single acting termination is made by football player; upon receiving of termination notification by Federation; Federation will notify to Sports Club termination process of football player in written form (by facsimile or return registered mail post). Date of notification of termination process to Sports Club by Federation will be considered as registered date of said termination and contractual relation between parties will be over by this time reserving rights of requirements of parties regarding results of termination.*
- Upon receiving of single-acting termination notification, Federation will ask to parties in written form (by facsimile or return registered mail post) to notify to Federation within seven days their requirements regarding results of termination process (wrongful termination compensation, sportive penalty) to Federation within seven days after receiving a notice from Federation. Above time periods will result to right forfeitures.*
- When single-acting termination is in process, football player has not right to sign an agreement with another Sports Club while preliminary investigations are finished or taken a related decision about results of an termination. Upon request of football player, in regards to case file in progress transfer permission is given to football player considering transfer and registry periods”*.
- 7.9 In the case at hand and in considering on a monthly basis the amounts becoming due to be paid to the Appellant and the amounts being paid by the Respondent, the Panel sees that every

month, starting from August 2007, a growing amount stayed unpaid. The total amount of YTL 258'000 which was due and unpaid on 31 December 2007 corresponds to more than the full payment of the monthly minimum payments (total of YTL 65'000) plus the full bonus for this period (YTL 120'000). There is no discussion that this is a substantial amount for the Appellant. Therefore the Panel is of the opinion that on 27 December 2007 the Appellant had the possibility to terminate the employment contract with the Respondent and – based on the TFF Arbitration Board decision of 10 April 2008 – as he complied with the *“legal form and term requirements”* mentioned above, he rightfully terminated the employment contract based on article 32 TFF Regulations by 27 December 2007.

- 7.10 As the Appellant rightfully terminated the contract based on article 32 TFF Regulations on 27 December 2007 he is not liable to the Respondent to pay any compensation. On the other hand the Respondent, setting the reason for the rightful termination of the contract, is liable to the Appellant to pay damages the Appellant suffered as a consequence of the early termination of the contract, based on article 34 TFF Regulations.
- 7.11 In the moment of termination of the employment contract for just cause on 27 December 2007 the Appellant would have been able to sign a new employment contract with another club to finish the season 2007/2008. However, due to the injury he suffered in October 2007, and because he was not playing in the starting formation of the Respondent in the games played in November/December 2007, the Player was not able to find a new club and sign a new contract. According to his contract with the Respondent, the Appellant's guaranteed monthly salary for January to May 2008 would have been a total of YTL 65'000 (5 x YTL 13'000). Further the Appellant would have received in January to May 2008, based on the terminated employment contract, a bonus of at least YTL 5'000 per game (in case he would not play). As there were 17 games to be played in January to May 2008 this would give an additional total amount of YTL 85'000 (17 x YTL 5'000). The total minimum amount the Appellant would look for to receive from the Respondent in January to May 2008 is therefore a total amount of YTL 150'000.
- 7.12 The TFF Professional Football-Facilities Executive Management granted the Appellant in its decision of 6 February 2008 damages in the amount of YTL 150'000 meanwhile the TFF Arbitration Board reduced these damages in its decision of 10 April 2008 to YTL 100'000. This reduction was mainly done in considering *“the situations, conditions, getting free of working power, affected of professional experience, skills, and profits”* as well as the saving *“from not having done the work”*. It cannot be contested that the Appellant did save expenses for not having to work in January to May 2008. On the other hand the Appellant was not able to find easily a new club as he was not able to play games in the national league. The Panel therefore finds it correct to award the Appellant under the title of damages an amount to be received by the Respondent of YTL 150'000 which is the minimum amount he would have earned from the Respondent in case he would have finished his employment contract with the Respondent.
- 7.13 After having considered the facts, the parties' submissions and evidences presented, the Panel concludes, based on the reasoning made in the previous paragraphs, that the Respondent has to pay to the Appellant a total amount of YTL 408'500, composed by the unpaid salaries until

31 December 2007 of YTL 258'500 and the damages for the early termination of the employment contract in the amount of YTL 150'000.

- 7.14 In view of what has been indicated above, the panel is not allowed to analyze the counterclaim filed by the Respondent which is considered as withdrawn and therefore rejected in its entirety.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mustafa Ozkan is partially upheld.
2. The decision of the TFF Arbitration Board of 10 April 2008 is amended as follows:
MKE Ankaragucu Sports Club has to pay to Mustafa Ozkan a total amount of YTL 408'500, i.e. YTL 258'500 as outstanding salary and YTL 150'000 as compensation for breach of contract.

(...)
5. All further and other claims for relief are rejected.