



**Arbitration CAS 2007/A/1352 MKE Ankaragücü Spor Kulübü v. Charles Edouard Coridon, award of 25 June 2008**

Sole Arbitrator: Mr Bernhard Welten (Switzerland)

*Football*

*Contract of employment*

*Production of documents and exceptional circumstances*

*Just cause*

*Breach of employment contract*

*Termination of the contract and claim for compensation*

*Proportionality of disciplinary measures sanctioning the non-performance of the employment contract*

- 1. The production of the additional documents is admitted, if these documents are related to arguments already presented by the parties in front of the FIFA Dispute Resolution Chamber, because they are necessary and pertinent in order to establish the facts of the case. Furthermore, a CAS panel may at any time order the production of additional documents, if it is deemed appropriate to supplement the file.**
- 2. Late payments generally constitute a just cause to terminate the employment agreement with immediate effect. However, what is important is that all facts of the case need to be considered for evaluating if the behaviour of the club's delayed payment is sufficient to be considered as just cause for the early termination of the employment contract. The legal definition of a just cause is that the circumstances are such that the continuation of the employment relationship cannot be imposed, according to the rules of bona fide, upon the party terminating the contract.**
- 3. It is considered as a breach of the employment agreement between a club and a football player if the payments are always late, not only by days or weeks, but by months and with quite reasonable amounts; in such a case, the player is in a position to refuse the performance of his contractual obligations, that is to say, to refuse to play.**
- 4. Generally the employment relationship is to be considered as terminated in case an employee leaves the working place without notice. If the employee cannot demonstrate the existence of a valid reason, as e.g. the termination without notice, the employment relationship will be considered as terminated. The question of the termination of the contract is independent from any claim for compensation that the employer or the employee may raise after the termination of the employment relationship without notice.**
- 5. The club's regulations providing for financial penalties in case of lack of respect of the return dates or absence to the trainings or meetings have to be qualified as liquidated**

**damages sanctioning the disrespect by the employee of the directions given by the employer. Such regulations providing for liquidated damages or disciplinary measures sanctioning the non-performance of the employment contract are admissible under the provisions of Swiss law, at least if they are proportionate, foreseeable and limited. As a result, the fines imposed by the club are formally not to be considered as disciplinary decisions but as the exercise of a contractually agreed claim. The absence of the notification of such a decision concerning the fines imposed on a player is therefore not sufficient to set beside and disregard such claims. According to Swiss law, excessively high liquidated damages shall be reduced at the discretion of the Court and not simply disregarded.**

MKE Ankaragücü Spor Kulübü (“the Club” or “the Appellant”) is a football club with its registered office in Ankara, Turkey. It is a member of the Turkish Football Federation, which has been affiliated with the Fédération Internationale de Football Association (FIFA) since 1923. The latter is an association established in accordance with Art. 60 ff of the Swiss Civil Code and has its seat in Zurich (Switzerland).

Mr Charles Edouard Coridon (“the Player” or “the Respondent”) is a French citizen. He played as a professional football player with the Appellant, from September 2005 to March 2006. Since February 2007 he played as amateur player in France.

The elements set out below are a summary of the main relevant facts, as established by the Panel on the basis of the written submissions of the parties, the exhibits produced, the FIFA file and the hearing held on 8 January 2008, in Lausanne (Switzerland).

The Player Charles Edouard Coridon was born on 9 April 1973. He played for various clubs in France, amongst which the club *Paris Saint-Germain*, which he left at the end of the season 2004/2005.

On 25 August 2005, the Player and his agent met the representatives of the Club in order to negotiate an employment agreement (“Contract”) between the Parties. After extensive discussions led in the morning, the Respondent and the Appellant signed an employment agreement in the afternoon. This agreement was drafted by the Player’s agent, on a computer available in the office of the Club’s President. It was entered into force for a fixed period of time from 1 September 2005 until 31 May 2006. It reads in the pertinent parts as follows:

“(…)

***3. Contract Value and payment terms***

*Club agrees to pay Euro 325’000 to player for 1 season.*

*Cash: Euro 50’000 sign on fee  
Euro 25’000 cheque due to 1<sup>st</sup> of October 2005*

*Guarantee Payment: Euro 15’625 salary per month starting from 10 October 2005. Total Euro 125’000*

*Per Game Payment: Euro 125'000*

*For each game if the player is in the squad he will get Euro 3'676.*

*(...)*

*9. Club will provide 2 Ankara-Paris-Ankara air tickets to the player and his family.*

*10. Player accepts to follow the program of technical director.*

*11. Player had received the club regulations and directions and accepts to obey them.*

*(...)*

*13. This contract read, accepted and signed by both parties on 25<sup>th</sup> August 2005”.*

The Player's agent declared at the hearing that the Club regulations mentioned in art. 11 of the Contract dated 25 August 2005 were not remitted to the Player upon signature of the contract.

The Club produced with its appeal brief of 17 August 2007 a document entitled “*mke ankaragücü Sports Club Disciplinary Regulations (2005-2006)*”. It results from these Regulations, amongst others, that “*every player signing a contract with MKE Ankaragücü Sports Club has to obey the regulations and social morale values in match, training, camp, journey and in club facilities*”. It also results from the chapter of these Regulations entitled “*Penalties*” that a player not obeying the return dates shall be penalised with a fine of New Turkish Liras (YTL) 10'000 for each and every late day and that a player not attending the trainings will get a fine of the same amount. The Club's Regulations also provide that “*Penalties issued will be deducted from the player's first payment (per game, guarantee and bonus)*”.

On 26 August 2005, further documents were signed between the Parties, amongst which documents concerning the transfer of the Player and documents confirming the existence of an employment contract with the Player, which had to be registered with the Turkish Football Federation. Neither of the Parties has produced an English translation of these documents or submits that these documents would in any way amend the employment agreement dated 25 August 2005.

On 25 August 2005, when the employment contract was signed, the Player received the sign on fee, in the amount of EUR 50'000, in cash. He also received a cheque of EUR 25'000, corresponding to the payment to be made in accordance to the Contract on 1 October 2005. Due to the lack of funds on the bank account on which the cheque was drawn, the Player has not been able to cash this cheque until November 2005.

The Player played a total of 21 games (14 games in 2005; 7 games in 2006) on a regular basis for the Club from August 2005 to 13 March 2006. The representatives of the Club declared at the hearing that they were very satisfied with the Player's performance on the field.

Right from the start of the Contract, the Player encountered difficulties to be paid on due time as provided by his employment contract. He complained orally several times about this situation to the President and the General Manager of the Club. At the hearing, the General Manager of the Club admitted that all Turkish clubs have liquidity problems at the end of the civil year, due to the fact that the fixed royalties of the TV broadcasting rights are paid every two months and the variable but very

important amounts for the points made by the clubs in the first part of the season are only paid to the clubs in late January.

The Player submits that he received a total amount of EUR 105'000 until the end of 2005, in three instalments, that is to say EUR 50'000 on the day the contract was signed (sign on fee), EUR 25'000 cashed in November 2005 from the cheque received on the day of the signature of the Contract, and EUR 30'000, received in cash, at the end of November 2005. According to the Contract, the Player was due to receive the following amounts:

- EUR 50'000: sign on fee, to be paid on 25 August 2005
- EUR 3'676: bonus payment for 1 game, to be paid on 31 August 2005
- EUR 11'028: bonus payment for 3 games, to be paid on 30 September 2005
- EUR 25'000: amount to be paid on 1 October 2005 according to the Contract
- EUR 15'625: monthly salary for October, to be paid on 31 October 2005
- EUR 14'704: bonus payment for 4 matches, to be paid on 31 October 2005
- EUR 15'625: monthly salary for November, to be paid on 30 November 2005
- EUR 11'028: bonus payment for 3 matches, to be paid on 30 November 2005
- EUR 15'625: monthly salary for December 2005, to be paid on 31 December 2005
- EUR 11'028: bonus payment for 3 matches, to be paid on 31 December 2005.

According to this breakdown, the Club owed the Player in accordance to the Contract a total amount of EUR 175'339 until 31 December 2005 whereas it paid a total of EUR 105'000. Therefore the Club owed the Player an amount of EUR 68'339 by the end of 2005.

On 30 November 2005, the Player signed a document drafted in Turkish and entitled "*Payment receipt*". This document mentions that a payment has been made to Charles Edouard Coridon of EUR 14'704. The document however does not mention the reason for which this payment has been made.

The Player left Turkey for France at the end of December 2005, for the Christmas break. The players of the Club were due to be present at a training camp organized in Antalya, in Turkey, on 2 January 2006. According to the declarations made by the Players' agent at the hearing, the Player had decided before his departure for France that he would not come back to Turkey, given the problems he faced to receive his money on due time. At the hearing the Players' agent further stated, that the Player informed the representatives of the Club of his intention not to come back to Turkey. When arriving at the airport in order to take a plane to return to France in late December 2005, the Player realized that his air ticket, initially booked by the Club, had been cancelled. He therefore had to buy a new air ticket. The Players' agent explained at the hearing that the Player was eventually persuaded by the representatives of the Club to return to Turkey, what he did on 7 January 2006, the day on which he joined the squad in Antalya. The Player participated in the games played by the Club at the beginning of 2006.

According to the Player, the Club paid him an amount of EUR 45'000 on 29 January 2006. The Player also confirmed that he received from the Club another amount of EUR 40'000, on 16 February 2006.

On 18 February 2006, the Player signed a document drafted in Turkish and entitled "*Payment receipt*". This document mentions that payment has been made to Charles Edouard Coridon of EUR 15'000 as salary, and of EUR 10'000 as bonus payment for the games he played.

On 27 February 2006, the Board of Management of the Club decided to impose a penalty on the Player for his late arrival to the training camp organized in Antalya at the beginning of January 2006. The Board considered that the Player missed 5 training days and requested a penalty of YTL 10'000 for each day of absence, that is to say a total penalty of YTL 50'000 to be paid to the Club. This amount corresponds approximately to an amount of EUR 30'300. According to a decision of the General Manager of the Club dated 14 March 2007 and based on the Club's Regulations, the amount of the fine shall be deducted from the first (next) payment to be made to the Player.

The Player submits that this decision was never presented to him. The representatives of the Club have objected that the Player had knowledge that he would be given a sanction for his late arrival in Antalya and that the Player tried to discuss the amount of this sanction with the President of the Club.

On 11 March 2006 the Player played his last match with the Club. According to the Player's agent, he said to the representatives of the Club before this match that he had the intention to leave the Club and return to France. The Player's agent further stated in his hearing, that the representatives of the Club told the Player that they would accept to let him leave Turkey after having played the match scheduled on 11 March 2006. The representatives of the Club denied the existence of such an agreement in the hearing however.

On 13 March 2006 the Player left Turkey. The representatives of the Club declared at the hearing that they were very surprised of the absence of the Player at the training session of 13 March 2006 and that they tried to get in touch with him. They declared having realized that the Player had left Turkey after having made several investigations, including checks with the border authorities.

It is undisputed between the Parties that the Player was contractually entitled to receive a total amount of EUR 62'190 for the period running from 1 January to 13 March 2006, corresponding to the monthly salaries for January, February and one third for March 2006 as well as bonus payments for seven games the Player played for the Club in 2006.

On 17 March 2006, the Club imposed a fine on the Player, for his absence to the training from 13 to 17 March 2006, of YTL 60'000, approximately equivalent to EUR 35'520.

By letters dated 13 and 21 March 2006, the Club asked FIFA to locate the Player because the latter had allegedly left the Club without prior notice.

On 3 April 2006, the Player sent a fax to the General Manager of the Club, requesting for a document stating that the Club and the Player decided "*to terminate the contract, binding them until May 2006, from the 12<sup>th</sup> March 2006*".

On 27 April 2006, the Club filed a formal complaint against the Player in front of FIFA, claiming that the Player had unilaterally terminated his employment contract and he therefore has to pay EUR 300'000 as compensation to the Club. Further the Club asked FIFA to suspend the Player to participate in official matches for a period of four months. The Player requested the claim of the Club to be dismissed and counterclaimed the payment of EUR 60'529, plus 5 % interests as of 11 March 2006.

On 27 April 2007, the FIFA Dispute Resolution Chamber (DRC) took its decision ("Decision") and stated the following (see the relevant parts):

"(...)

*8. Subsequently, the Chamber stated that it is beyond controversy in the present procedure that the Respondent left the Claimant prior, i.e. on 13 March 2006, to the expiry of the contract, i.e. on 31 May 2006. The Chamber had thus to deliberate whether the Respondent had valid and justified reasons for leaving the Claimant before the expiry of the term of the contract.*

*9. In this respect, the Chamber took note that while the Claimant maintained having fulfilled his financial obligations towards the Respondent as specified in the employment contract until his premature departure, the Respondent, on the other hand, alleged that the Claimant had only paid him, if at all, in irregular intervals and illogical and invariably late manner.*

*10. The Chamber started its deliberations by emphasizing that, as established above, the Respondent rendered his services to the Claimant until 13 March 2006. As a result thereof, the Chamber underlined that the Claimant is liable to cancel all allegedly outstanding amounts contractually agreed upon by the parties until this date.*

(...)

*14. After deliberating all of the relevant facts and documentation provided by both parties in this respect, the Chamber unanimously came to the conclusion that, in the present case, the appliance of a fine in the amount of YTL 50'000 and later on of an amount of YTL 60'000 for the absence of a player of a few days is not proportionate. Moreover, the Chamber underscored that the fines corresponding to one and a half monthly salary of the Respondent cannot be supported and would be usurious and unethical taking into account that the delay was of a few days only.*

(...)

*17. The Dispute Resolution Chamber then emphasized that the club, apparently, did not have any reasons justifying the non-payment of the relevant amounts.*

*18. In continuation, the Chamber stated that the persistent failure of a club to comply with its financial obligations towards a player without just cause is generally to be considered as a unilateral breach of an employment contract.*

*19. As a result of the above, the Dispute Resolution Chamber summarized that the Claimant failed to prove that the amounts claimed by the Respondent were duly paid and thus remained unpaid. Consequently, the members of the Chamber unanimously came to the conclusion that the Claimant breached the contract with the Respondent and that the latter had therefore valid reasons to terminate the contract on 13 March 2006 by leaving the Claimant.*

(...)

22. *In view of all the above, the Dispute Resolution Chamber decided that the Claimant has to pay the Respondent the amount of EUR 45'529.*

Based on its above mentioned reasoning the DRC decided:

1. *The claim of the Claimant / Counter-Respondent, club MKE Ankaragücü Spor Kulübü is dismissed.*
2. *The counter-claim of the Respondent / Counter-Claimant player Charles Edouard Coridon is partially accepted.*
3. *The Claimant / Counter-Respondent, club MKE Ankaragücü Spor Kulübü, has to pay the amount of EUR 45'529 to the Respondent / Counter-Claimant player Charles Edouard Coridon, **within 30 days** as from the date of notification of this decision.*
4. *Any further claims lodged by the Respondent / Counter-Claimant, Charles Edouard Coridon, are rejected.*
5. *In the event that the due amount is not paid within the stated deadline, an interest rate of 5% p.a. will apply as of expiry of the fixed time limit and the present matter shall be submitted to FIFA's Disciplinary Committee, so that the necessary disciplinary sanctions may be imposed.*
6. *The Respondent / Counter-Claimant, player Charles Edouard Coridon, is directed to inform the Claimant/Counter-Respondent, MKE Ankaragücü Spor Kulübü, immediately of the account number to which the remittance is to be made and to notify the Dispute Resolution Chamber of every payment received.*
7. *According to Art. 61 par. 1 of the FIFA Statutes this decision may be appealed before the Court of Arbitration for Sport (CAS). The statement of appeal must be sent to the CAS directly within 21 days of receiving notification of this decision and has to contain all elements in accordance with point 2 of the directives issued by the CAS, copy of which we enclose hereto. Within another 10 days following the expiry of the time limit for the filling of the statement of appeal, the appellant shall file with the CAS a brief stating the facts and legal arguments giving rise to the appeal (cf. point 4 of the directives).*

On 18 July 2007 the DRC served the Decision to the Parties and to the Turkish Football Federation by fax letter.

On 8 August 2007, the Club filed a statement of appeal with the Court of Arbitration for Sport (CAS). It challenged the above-mentioned Decision of the DRC in requesting that *"The Decision of FIFA shall be annulled"* and that *"The sanctions taken by the club against the player shall be executed and outstanding penalties shall be collected from the player"*.

On 17 August 2007, the Club filed its appeal brief, which contains short critics on the Decision challenged, accompanied by documents produced as evidence.

In essence, referring to the appeal brief dated 17 August 2007 and to what has been exposed at the hearing held in Lausanne on 8 January 2008, the Club's submissions may be summarised as follows:

- it is wrong to consider that the Club has breached the Contract and that the Player had valid grounds to leave the Club and return to France;

- it should be deducted from two receipts signed by the Player that the Club has paid an amount of EUR 14'704 on 30 November 2005 and EUR 25'000 on 18 February 2006. These two amounts should be added to what the Player admitted to have received;
- furthermore, the two fines imposed on the Player for his absence in early January 2006 (ATL 50'000) and between 13 and 17 March 2006 (YTL 60'000) should be deducted from any outstanding amount owed to the Player. In consequence, the Club should be considered as having fulfilled all its payment obligations toward the Player; the Club even had paid more than what it owed the Player.

On 19 September 2007 the Player filed his answer. He requested the dismissal of the appeal as far as the appeal is admissible and therefore that the Club is condemned to pay to the Player an amount of EUR 45'529, plus interests of 5% p.a. starting on 11 March 2006. He further requested that the Appellant has to pay all costs of this arbitration and all expenses to be incurred by the Respondent in connection with this arbitration, including lawyer's fees, as well as all costs of the FIFA case and expenses incurred by the Respondent in connection with the FIFA procedure, including the lawyers' fees.

On 8 January 2008, the day of the hearing, the Parties signed the Procedural Order, which confirmed amongst other the CAS jurisdiction based on art. 60 and 61 FIFA Statutes and the applicable law to be determined in accordance with art. R58 of the Code of Sports-related Arbitration (the "Code").

On 8 January 2008 a hearing was held in Lausanne. The parties did not object to the composition of the Panel or the conduct of these arbitration proceedings.

On 9 January 2008, the Player was set a deadline of ten days in order to file any comments with regard to the documents that were submitted by the Appellant during the course of the hearing, whose production had been ordered by the Sole Arbitrator at the hearing.

On 18 January 2008, the Player filed additional documents.

On 30 January 2008, the Club filed its comments to these additional submissions of the Player.

## LAW

### CAS Jurisdiction

1. The jurisdiction of CAS, which is not disputed, derives from art. 60 ff. FIFA Statutes in force as of 1 August 2006 and art. R47 of the Code. It is further confirmed by the Procedural Order duly signed by the Parties.

2. It follows that the CAS has jurisdiction to decide on the present dispute.
3. Under art. R57 of the Code, the Panel has the full power to review the facts and the law. The Panel did therefore not only examine the formal aspects of the appealed decision but held a trial *de novo*, evaluating all facts and legal issues involved in the dispute.

### **Applicable law**

4. Art. R58 of the Code provides the following:  
*“The Panel shall 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”.*
5. Art. 60 par. 2 FIFA Statutes further provides for the application of the various regulations of FIFA and, additionally, Swiss law.
6. In the present matter, the Parties have not chosen the application of any particular law. Therefore, the rules and regulations of FIFA apply primarily and Swiss law applies complementarily. Both Parties based their pleadings on Swiss law.

### **Procedural motions**

#### *A. Communication by FIFA of its file*

7. Based on art. R44.3 and art. R57 of the Code, the Panel requested FIFA to send the complete file of its Dispute Resolution Chamber.
8. On 31 January 2008 DRC’s file was provided to the Panel.

#### *B. Evidentiary Proceedings Ordered by the Panel*

9. At the hearing, the Club requested to produce several additional documents. Amongst these documents were English translations of the two receipts dated 30 November 2005 and 18 February 2006, and documents regarding the fines imposed on the player for an alleged absence at the trainings from 2 to 7 January 2006 and from 13 to 17 March 2006.
10. Referring to art. R56 of the Code, the Player’s legal counsel objected to the production of these documents, submitting that the Club as Appellant shall not be authorized to produce new exhibits after the deadline elapsed to file the Appeal Brief.

11. The hearing was interrupted in order for the Sole Arbitrator to make a decision on the admissibility of these documents. The Sole Arbitrator decided to admit the production of the additional documents concerning the above mentioned receipts and relating to the fine imposed on the Player. The Sole Arbitrator considered that these documents related to arguments already presented by the Club in front of the FIFA Dispute Resolution Chamber. In consequence, these documents are necessary and pertinent in order to establish the facts of this case. Such a circumstance shall be considered as an exceptional circumstance in the sense of art. R56 of the Code, authorising a party to produce new evidence (see ROCHAT/CUENDET, in *“The proceedings before the Court of Arbitration for Sport”* edited by RIGOZZI/BERNASCONI, Lausanne 2006, pp. 67-68). Furthermore and based on art. R44.3 par. 2 of the Code, which is applicable to the appeal proceedings according to art. R57 par. 1 last sentence of the Code, the Sole Arbitrator may at any time order the production of additional documents, if he deems it appropriate to supplement the file. As the Sole Arbitrator had already requested the DRC file from FIFA, he was, in any case, due to receive the documents in question in the file.

### **Admissibility**

12. The Appeal was filed within the deadline provided by art. 61 of the FIFA Statutes and stated in the DRC Decision, that is within 21 days after notification of such decision. The parties complied with all of the other requirements of art. R48 of the Code.
13. It follows that the Appeal is admissible.

### **Main issues**

14. The main issues to be resolved by the Panel are:
  - A. Is there a claim resulting from the early termination of the Contract?
  - B. Has the Club fulfilled its payment obligations towards the Player?
  - C. Is the Player bound by the Club’s Regulations and the fines imposed on him?
  - D. If so, was it justified to sanction the Player and can the amount of the fines be deducted from any outstanding amount due to the Player?
- A. Is there a claim resulting from the early termination of the contract?*
15. It is undisputed between the Parties that the Player left the Club before the end of the contractual period, that is to say, before 31 May 2006. The Club submits that the Player therefore committed a breach of the employment agreement. The Player submits that the Club agreed to his departure on 30 March 2006, complementary that he had just cause to terminate the Contract.

16. The submissions of the Player as to the existence of a mutual consent to terminate the Contract on 13 March 2006 have been disputed by the Club. To substantiate his submissions, the Player relies on the witness statement of his agent. The Sole Arbitrator is of the opinion that this witness statement is not sufficient to evidence the existence of a mutual agreement to terminate the Contract. Due to his position towards the Player and, to a certain extent, his personal interest in the present case, the declarations of the agent have to be considered carefully and cannot be interpreted as representing a totally impartial summary of the facts. The Player's agent has secondly admitted that he was not present in Turkey when discussions about an early termination were allegedly held. The agent was informed of these discussions through his partner in Turkey. It cannot be excluded that the reporting of the agent's partner in Turkey does not fully correspond to the Club's intentions regarding the Contract closed with the Player. The Sole Arbitrator is thus of the opinion that there is not sufficient evidence of the existence of a mutual agreement for an early termination of the Contract.
17. According to art. 14 FIFA Regulations for the Status and Transfer of Players 2005 ("RSTP 2005"), a contract may be terminated by either party without consequences of any kind in the case of just cause. It also results from Swiss law that the employer and the employee may at any time terminate the employment relationship without notice, for just cause (art. 337 para. 1 Swiss Code of Obligations, "CO").
18. The Player submits that his salary has been paid only irregularly and that he has never received his money on due time, except for the signing fee. The Player contends that this is a just cause for an early termination, according to art. 14 RSTP 2005 or art. 337 para. 1 CO. The Commentary to art. 14 RSTP states that e.g. the fact that a player has not been paid his salary for over 3 months, despite the club being informed by the player of such default, constitutes a just cause to terminate the contract. The CAS jurisprudence is quite clear that late payments generally constitute a just cause to terminate the employment agreement with immediate effect. However there are decisions dealing with more complex facts and involving different circumstances which did deny a just cause. What is important is that all facts of the case need to be considered for evaluating if the behaviour of the club's delayed payment is sufficient to be considered as just cause for the early termination of the employment contract. The legal definition of a just cause is that the circumstances are such that the continuation of the employment relationship cannot be imposed, according to the rules of *bona fide*, upon the party terminating the contract. In order for the Sole Arbitrator to consider that there is a just cause, the concerned party's situation must be of a certain level of seriousness.
19. In the present case, the Sole Arbitrator considers that the way in which the Club paid the Player's salary constituted a breach of the employment agreement. If ever made, the payments were always late, not only by days or weeks, but by months and with quite reasonable amounts; by the end of 2005 the Club still owed the Player an amount of EUR 68'000. In such a situation, the Player was in a position to refuse the performance of his contractual obligations, that is to say, to refuse to play. Such a refusal could have been considered as justified according to art. 82 CO, which reads as follows: "*A party who wishes to demand performance of a bilateral contract by the other party must either have already performed himself or tender his performance, unless pursuant to the contents or the nature of the contract he is only required to perform later*". In the present case, the Club was clearly not

in a position to claim for the performance of the Contract, however the Player was always performing in the games. Accordingly, the Sole Arbitrator is of the opinion that the Player had not only the possibility to refuse the performance of his contractual duties but he certainly had just cause to terminate the agreement.

20. However, no further reasoning is necessary regarding the existence of a just cause and therefore the possibility to early terminate the Contract, as generally the employment relationship is to be considered as terminated in case an employee leaves the working place without notice. If the employee cannot demonstrate the existence of a valid reason, as e.g. the termination without notice, the employment relationship will be considered as terminated (see WYLER R., *Droit du travail*, Bern 2002, p. 369 and references cited under Note 1352). It has to be emphasized that the question of the termination of the contract is independent from any claim for compensation that the employer or the employee may raise after the termination of the employment relationship without notice. In the present case, it is thus clear that the employment agreement between the parties has been terminated on 13 March 2006 at the latest, the day on which the Player left Turkey.
21. As the Contract was terminated on 13 March 2006 anyhow the issue of the existence of a just cause is thus only relevant as regards any claim for compensation based on the termination for just cause from the employer or the employee. In the present case, neither the Player nor the Club has presented such a claim. The Player only seeks payment of his income until 13 March 2006 and does not claim for damages based on the just cause for which the Club is liable (e.g. payment of his income until the end of the Contract). As regards the Club, it claimed for compensation in an amount of EUR 300'000 in front of the FIFA Dispute Resolution Chamber. This claim was dismissed by the appealed Decision. In its statement of appeal, the Club requested the Decision to be annulled, asking for the execution of the sanctions taken by the Club against the Player and the collection of outstanding penalties from the Player. The Club however did not request for the payment of compensation for an alleged early termination of the Contract without just cause.
22. Furthermore, in its submissions, the Club did not address the issue of compensation for early termination. In the absence of any request for relief regarding the payment of compensation, it has to be considered that such a claim has not been presented to the Sole Arbitrator at all (see art. R48 of the Code). From the attitude of the Club it can be concluded that the Appellant has renounced to its claim for compensation. Finally as submitted by the Player, there is absolutely no evidence as to the existence of any damage caused to the Club by the early departure of the Player.
23. In conclusion, in the absence of any possibility to admit a claim for compensation due to the early termination of the Contract, the question of the existence of just cause is of no practical importance to this decision.

B. *Has the Club fulfilled its payment obligations towards the Player?*

24. The Club submits that the appealed decision did not take into account payments allegedly made to the Player on 30 November 2006, in the amount of EUR 14'704, and on 18 February 2006, in the amount of EUR 25'000. To substantiate this argument, the Club refers to two receipts, dated 30 November 2005 and 18 February 2006. These receipts are drafted in Turkish and signed by the Player.
25. The representative of the Player submits that these receipts are not relevant, additionally that the amounts mentioned in these receipts are part of the amounts that the player admitted to have received.
26. The two receipts presented by the Club do not mention the exact reason of the payments made to the Player. It is therefore not possible to differentiate any amount paid according to these receipts from any other amount that the Player has admitted to have received. As regards its payment obligations, the Club carries the burden of proof. The Sole Arbitrator is of the opinion that the receipts presented do not evidence that the Club has paid to the Player more than the latter admits to have received.
27. The Sole Arbitrator furthermore considers that the dates of the receipts correspond to periods where the Player admits that the Club fulfilled, partially, its payment obligations. Therefore this confirms the Player's submissions, according to which the amounts mentioned in the receipts are part of the total amounts the Player admitted to have been paid. In consequence and in the absence of other relevant documents, such as a clear breakdown of the payments executed by the Club to the Player and agreed by both parties, or bank statements evidencing transfer of money from the Club to the Player, the Sole Arbitrator is of the opinion that the Club cannot be considered as having paid other amounts than the ones admitted by the Player, that is to say EUR 105'000 until the end of year 2005, and EUR 95'000 from the beginning of 2006 until March 2006, which makes a total of EUR 190'000.
28. The Club did not dispute that, according to the employment agreement, an amount of EUR 235'529 was to be paid to the Player until 12 March 2006, as sign on fee, monthly salaries and bonus payments for the games played. Accordingly, the FIFA Dispute Resolution Chamber correctly considered that the Player had a claim against the Club for the payment of an amount of EUR 45'529, based on the employment agreement signed between the parties.
29. The DRC decision stated that interests of 5% have to be paid in case of the non-payment of the amount due to the Player within 30 days as from the date of its notification. The Player however requested in front of FIFA to be awarded interests as of 11 March 2006. This request has been repeated as a counterclaim in the present appeal. The payment dates of the salary, bonus and sign on fee had been contractually agreed. Therefore the Club was in automatic default according to art. 104 CO in missing the contractual payment dates. The Player has thus to be awarded interests of 5% as from the day when the Club was in default. This day was at the latest when the Player left the Club and therefore the Contract was terminated (see art. 339

CO), so that the Club will be ordered to pay interests of 5% on the amount due to the Player, as from 13 March 2006.

C. *Is the Player bound by the Club's Regulations and the fines imposed on him?*

30. The Club submits that the fines imposed on the Player shall be deducted from any outstanding amount. The Player objects that the fines imposed upon him were never notified and, additionally, that he never accepted the disciplinary regulations on which the Club relies in order to justify the principles and the amount of the sanctions pronounced.
31. The Contract signed between the parties reads as follows: "*Player had received the club regulations and directions and accepts to obey them*". In spite of this sentence in the employment agreement signed by the Player, the Player's agent declared at the hearing that neither the Player, nor him, were presented the Club's Regulations and Directions on the day they signed the Contract. As underlined earlier in this decision, the agent's declarations have to be considered carefully. Further it needs to be considered that the agent admitted to have drafted himself the employment agreement signed by the Player, in the office of the President of the Club, so that it seems quite peculiar to have drafted clause 11 of this employment agreement, to have accepted to sign such an agreement, but to submit that the issue of the Club's Regulations and Directions has not been addressed.
32. The Sole Arbitrator considers that it is against the *bona fide* principle for an employee to sign an employment agreement in which he accepts to follow certain regulations, but to object not to be bound by such regulations, because of the alleged ignorance of the content of these regulations. Even if these Regulations have not been presented to the Player on the day of the signature of the employment agreement, the Player should have made the necessary steps in order to obtain these regulations. Finally, it is not exceptional for a club to have regulations imposing a fine on a player in case of unjustified absences. Having played in a top European club previously, the Player can be deemed to have been perfectly aware that any unjustified absence would have financial consequences for him in the meaning of disciplinary sanctions.
33. The Sole Arbitrator thus considers that the Player was bound by the Club's Regulations and Directions and that it was possible for the Player to get a copy of such documents from the Club.
34. The Sole Arbitrator is furthermore of the opinion that the Club's Regulations providing for financial penalties in case of lack of respect of the return dates or absence to the trainings or meetings have to be qualified as liquidated damages sanctioning the disrespect by the employee of the directions given by the employer. Such regulations providing for liquidated damages or disciplinary sanctions are admissible under the provisions of Swiss law, at least if they are proportionate, foreseeable and limited (see Decision of the Federal Tribunal ("*DTF*" 119 II 162, cons. 2), concerning the employment agreement of a basketball player).

45. It results from the above mentioned considerations that the fines imposed by the Club are formally not to be considered as disciplinary decisions but as the exercise of a contractually agreed claim. The absence of the notification of such a decision concerning the fines imposed on the Player is therefore not sufficient to set aside and disregard such claims.
- D. Was it justified to sanction the Player and can the amount of the fines be deducted from any outstanding amount due to the Player?*
46. It remains to be decided whether the fines imposed on the Player are justified and can be deducted from the outstanding amounts and, if so, to which extent.
47. The Sole Arbitrator is of the opinion that the second penalty is not contractually justified and that it cannot be imposed upon the Player, because the absence which the player is blamed for (13 to 17 March 2006) has occurred outside the contractual period. Referring to what has been stated above concerning the termination of the Contract, it is repeated that the Contract was terminated on 13 March 2006 with the departure of the Player. The Player was therefore no longer contractually obliged to the Club in any way and certainly he had no longer to perform for the Club after this date; in other words the Player had no obligation to take part in the Club's activities such as trainings after 13 March 2006. In consequence, the Club has no contractual basis to penalize the Player for his absence on the basis of the Regulations; these Regulations were only applicable during the validity of the employment agreement. Any claim of the Club concerning the non-performance of the Player's obligations after the termination of the contract on 13 March 2006 should have been presented as a claim for compensation due to termination of the contract without just cause. As stated above, the Club did not file such a claim.
48. It has to be decided whether the first fine imposed on the Player, for his absence from the training camp in Antalya from 2 January 2006 to 7 January 2006 is justified and if such a claim can be deducted from the outstanding amounts due to the Player. The DRC concluded unanimously that the appliance of a fine in the amount of YTL 50'000 (approximately EUR 30'300) for the Player's absence for a few days only was not proportionate and would be usurious and unethical. According to art. 163 al. 3 CO, excessively high liquidated damages shall be reduced at the discretion of the Court. It also results from the jurisprudence of the Swiss Supreme Court that disciplinary measures sanctioning the non-performance of the employment contract shall be proportionate and that an equitable and impartial exercise of the disciplinary power of the employer has to be guaranteed (see DTF 119 II 162, cited here above).
49. The Sole Arbitrator is of the opinion that the amount of the liquidated damages pronounced against the Player is not proportionate and excessively high. For an absence of five days, the Player received a penalty ascending to an amount of approximately two months of salary. This consideration can however not lead the Panel to simply disregard the fine imposed upon the Player, as considered by the FIFA Dispute Resolution Chamber. According to the clear meaning of art. 163 al. 3 CO, excessively high liquidated damages should be reduced and not simply disregarded.

50. It thus belongs to the Sole Arbitrator to determine to which extent the liquidated damages pronounced for the training camp absence in the beginning of January 2006 shall be reduced. It is not so easy to decide what a proportionate liquidated damage shall be in the case at hand. The Sole Arbitrator considers that imposing a fine of approximately EUR 6'000 for one day of absence or for failing to attend the training, as provided for by the Club's internal Regulations, is far too excessive.
51. Before exercising his discretion to determine the amount of the fine imposed on the Player, the Sole Arbitrator examines whether it was justified at all to deduct such an amount from the outstanding amounts due to the Player.
52. The Club has issued a document entitled "*General Regulations about the Penalties*". It results from this document that "*Penalties issued will be deducted from the player's first payment (per game, guarantee and bonus)*". This provision is in line with art. 323a CO which provides that the employer may withhold a part of the salary, if so agreed upon, or if such is customary or is fixed by a standard or collective employment agreement. Art. 323a para. 2 CO states that no amount in excess of one tenth of the wages due on any single payday, and in total in excess of one weekly wage, may be withheld, except in the cases where there are different provisions in a standard employment or collective employment agreement.
53. In the present case, the decision taken by the Board of Management of the Club, dated 27 February 2006, to penalize the Player for his absence at the beginning of January, was to be executed by the General Manager. In a decision dated 14 March 2006, the General Manager considered that "*The fine penalty given to the football player will be deducted from the first progress payment*", as provided by the "*General Regulations about Penalties*".
54. This decision taken by the General Manager was made not only long after the Player missed five days of the training camp but also two weeks after the Club's Board of Management set the fine and mainly one day after the Player left Turkey and the Contract was terminated. Further the Club's Board of Management decision of 27 February 2006 was only taken after the Player received his last amount from the Club on 18 February 2006.
55. The facts are that the Player was only paid with considerable delays and by the end of 2005 the Club owed him an amount of around EUR 68'000. The Club was therefore in breach of the contract and as considered in this decision such substantial delay of payment constitutes a just cause for the Player to terminate the Contract. The Player saw as his only chance to make more pressure on the Club to receive its contractual payments by missing training sessions. However he presented himself always for the games to be played and the Coach always nominated him for the team. The Club was therefore in breach of the Contract when the Player missed the training camp in January 2006. It therefore has to be considered whether the decision of the Club to sanction the Player for missing the training sessions was made according to the relevant legal rules. As the Player had a just cause to terminate the Contract already by the end of December 2005 he could have stayed away from the Club. It definitely is against the principles of good faith to ask the Player to join the training camp in January 2006 and not paying him the monthly due salaries until December 2005, respectively further sanction him for not joining the

team in the training camp. Furthermore, it is admitted that an employee can refuse to go to work and to perform the employment contract when the employer is late in the payment of the salary, art. 82 CO being applied to this situation (see DTF 120 II 209). It results from the above mentioned that the Player was not in breach of the Contract and that the Club had no claim justifying a reduction of the salary, i.e. to pronounce a fine.

56. Therefore the decision taken by the Club's Board of Management on 27 February 2006 to sanction the Player with a fine of YTL 50'000 is illegal and has to be considered null and void. The Club has therefore no claim against the Player to be set off with the outstanding salary and bonus payments until 13 March 2006 and the Sole Arbitrator has therefore not to decide on how much the excessive fine has to be reduced based on art. 163 para. 3 CO.
57. The Club did not bring forward any other reason to reduce the amount due to the Player of EUR 45'529.

### **Conclusion**

58. Based on the foregoing, and after taking into due consideration all evidence produced and all arguments made, the Sole Arbitrator finds that the Player is entitled to receive an amount of EUR 45'529 based on the Contract terminated on 13 March 2006 for outstanding salaries and bonuses.
59. There is no reason to increase or reduce the amounts awarded to the Player in the decision of the FIFA Dispute Resolution Chamber dated 27 April 2007.
60. The Club's Appeal is therefore dismissed and the Club shall pay to the Player an amount of EUR 45'529 plus interests of 5 % per annum starting on 13 March 2006. The decision of the FIFA Dispute Resolution Chamber shall thus be partially reformed regarding the interests to be paid by the Club.

### **The Court of Arbitration for Sport rules:**

1. The appeal filed on 8 August 2007 by MKE Ankaragücü Sports Club against the decision issued on 27 April 2007 by the FIFA Dispute Resolution Chamber is dismissed.
2. The counterclaim filed on 19 September 2007 by Charles Edouard Coridon against the decision issued on 27 April 2007 by the FIFA Dispute Resolution Chamber is partially upheld.

3. MKE Ankaragücü Sports Club is ordered to pay to Mr Charles Edouard Coridon EUR 45,529 (forty-five thousand five hundred and twenty-nine Euros), plus 5% interest per annum starting on 13 March 2006 until the effective date of payment.
  4. Any further claims lodged by the parties are dismissed.
- (...).