

## EMERGENCY CRISIS AND SPORTING CONTRACTUAL STABILITY IN THE *BOTHEIM* CASE

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*ABSTRACT: This paper examines the decision of the Swiss Federal Tribunal in the dispute between Erik Botheim, FC Krasnodar and U.S. Salernitana 1919, by which the Court upheld the CAS award 2023/A/9686, treating it as a test case for contractual stability in professional football amid the war in Ukraine and the adoption of emergency regulatory measures by FIFA. The Federal Tribunal reviewed the allegations of a breach of fundamental legal principles and found no grounds for setting aside the arbitral award. It endorsed the panel's findings that no consensual suspension had been established and that the contractual relationship had entered a de facto standstill, and that no just cause for termination existed. The Court further considered the equitable approach adopted by the arbitrators, including the denial of the sign-on bonus and the inapplicability of the contractual penalty clause, to be legally sustainable. The judgment thus reaffirms the Federal Tribunal's role as an external guarantor of the systemic compatibility of lex sportiva.*

*Il contributo analizza la decisione del Tribunale federale svizzero nella controversia tra il calciatore Erik Botheim, il club russo FC Krasnodar e la U.S. Salernitana 1919, con cui è stato confermato il lodo CAS 2023/A/9686, quale banco di prova della stabilità contrattuale nel calcio in un contesto segnato dalla guerra in Ucraina e dall'adozione di misure regolamentari emergenziali da parte della FIFA. Il Tribunale ha esaminato le doglianze relative alla pretesa violazione dei principi fondamentali dell'ordinamento, ritenendo immune da vizi la ricostruzione operata dal collegio arbitrale. In particolare, ha condiviso l'esclusione di una sospensione consensuale del contratto, la qualificazione della vicenda come sospensione fattuale delle prestazioni e la negazione della giusta causa di risoluzione. Ha inoltre ritenuto legittima la soluzione equitativa adottata in sede arbitrale, inclusa l'esclusione dell'esigibilità del bonus alla firma e della clausola penale. La pronuncia conferma così il ruolo del giudice federale quale garante esterno della compatibilità sistemica della lex sportiva.*

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Keywords: *Sports employment contract – Emergency regulatory framework – Contract termination.*

*Contratto di lavoro sportivo – Disciplina emergenziale – Risoluzione contrattuale.*

SUMMARY: 1. The Dispute – 2. The Decision – 3. Article 17 RSTP between systemic function and structural limits – 4. Liability of the new club between sporting solidarity and competition law – 5. Review by the Swiss Federal Tribunal under Article 190 PILA – 6. The Case within the multilevel integration of Sports Private Law – 7. The reformulation of Article 17 RSTP and the role of national Federations in the multi-level system – 8. Conclusions: contextual limits and systemic significance of the Botheim case

## 1. *The Dispute*

The case under consideration originates from the employment contract entered into on 22 December 2021 between the Norwegian professional football player Erik Botheim and the Russian club FC Krasnodar (Krasnodar), with a fixed term expiring on 30 June 2025, within the framework of a permanent transfer from the Norwegian club Bodø/Glimt for approximately six million euros.<sup>1</sup>

On 24 February 2022, the Russian invasion of Ukraine radically altered the factual and legal context of the contractual relationship. In the days immediately thereafter, FIFA and UEFA suspended Russian clubs and national teams from international competitions, and several governments, including Norway, urged their nationals to leave Russia.<sup>2</sup> On 2 March 2022, a meeting took place between Krasnodar's management and the foreign players; the following day, Botheim left Russia and returned to Norway. The club maintained that during that meeting

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<sup>1</sup> The contract provided for a substantial monthly salary, a total sign-on bonus exceeding one million euros – with a first net instalment of EUR 500,000 payable by 10 March 2022 – and a clause requiring the player, in the event of termination without just cause, to pay EUR 30 million by way of compensation to the club.

<sup>2</sup> The United Nations General Assembly subsequently adopted, on 21 November 2023, the resolution on the Olympic Truce for the 2024 Olympic and Paralympic Games, with 118 votes in favour and two abstentions (*Russia* and *Syria*). The IOC published an official note announcing that it had withdrawn from the *Moscow* President and from the Russian Federation the highest honour of the Olympic movement for having breached the truce and other provisions of the Olympic Charter. The rule is of ancient origin, dating back to the very birth of the Olympic Games. In antiquity, in the ninth century B.C., all hostilities between states or cities ceased throughout the entire period during which the Olympic Games were held. This temporary peace allowed anyone to travel safely to participate in or attend the events, thereby ensuring general security. The IOC strongly recommended that all “International Sports Federations” and organisers of sporting events refrain from inviting or allowing the participation of “Russian and Belarusian athletes and officials in international competitions”, reaffirming full solidarity with Ukraine and establishing a “solidarity fund”.