



**Arbitrations CAS 2018/A/5747 Henrik Stridh v. International Ice Hockey Federation (IIHF) & CAS 2018/A/5748 Nils-Erik Landén v. IIHF & CAS 2018/A/5749 Tomas Montén v. IIHF, award of 18 October 2018**

Panel: Prof. Luigi Fumagalli (Italy), President; Mr Edward Canty (United Kingdom); Prof. Martin Schimke (Germany)

*Ice hockey*

*Validity of a disciplinary sanction imposed on coaches for a violation of the IIHF Regulations*

*Principles of interpretation applicable to articles of association*

*No violation of the rules in light of the application of the principles of interpretation to the relevant IIHF provision*

1. There is no unified view on how articles of associations should be interpreted in Switzerland. As the articles of association form the contractual basis of an association it can be argued that they have much in common with contracts and should therefore be interpreted through the contractual principles of the subjective intent of the parties and good faith. However, articles of association also set forth constitutive principles which may have effects on others beyond the original members of the association, and should therefore be subject to the more objective approach followed with respect to statutory laws. According to the Swiss Federal Tribunal (SFT), the statutes of a private legal entity are normally interpreted according to the principle of good faith, which is also applicable to contracts. However, the method of interpretation may vary depending on the nature and dimension of the legal person involved. As regards to the statutes of larger entities, it may be more appropriate to have recourse to the method of interpretation applicable to the law, whereas in the presence of smaller associations, the statutes may more legitimately be interpreted by reference to good faith. IIHF is a very large association whose regulations have effects worldwide and should therefore be subject to the more objective interpretation principles. The starting point for interpreting is its wording (literal interpretation). Where the text is not entirely clear, the true scope of the provision will need to be narrowed by taking into account all the pertinent factors, such as its relationship with other legal provisions and its context (systematic interpretation), the goal pursued, especially the protected interest (teleological interpretation), as well as the intent of the legislator as it is reflected, among others, from the drafting history of the piece of legislation in question (historical interpretation). This search for a true meaning beyond the clear literal text, however, finds a limit. According to the criminal law principle *nulla poena sine lege* i.e. a judge cannot rely on elements that the law does not contain to create new punishable acts. The “principle of legality” has been constantly applied in the CAS jurisprudence as requiring that the offences and the sanctions be clearly and previously defined by the law.
2. The plain wording of the relevant provision of the IIHF Articles of Association does not

extend to coaches the obligation to wear the medals throughout the entire closing ceremony. The result of its literal interpretation appears to correspond to the true meaning of the provision. This interpretation is confirmed by its context: the provision at stake in fact appears to put specific emphasis on the “awarded” players (and not on the coaches) who, wearing the silver medals, have the obligation to skate towards the players of the winning team for a handshake. A different conclusion, beyond the literal meaning of the provision, and in the absence of an indication that the literal meaning does not correspond in all aspects to the (different) true meaning would amount to the creation of a “new punishable act” for the coaches, that they could not foresee.

## **I. THE PARTIES**

1. Mr Tomas Montén was the Head Coach of the national U20 Ice Hockey Team of Sweden at the 2018 IIHF Ice Hockey World Junior Championship. Mr Henrik Stridh and Mr Nils-Erik Landén were his Assistant Coaches during that sporting event. Mr Montén, Mr Stridh and Mr Landén are jointly referred to as the “Appellants”.
2. The International Ice Hockey Federation (the “IIHF”) is the governing body of international ice hockey and inline hockey. It exercises regulatory, supervisory and disciplinary functions over Member National Associations, clubs, officials, coaches and players. The IIHF has its seat in Zurich, Switzerland.

## **II. FACTUAL BACKGROUND**

### **A. Background facts**

3. Below is a summary of the relevant facts and allegations based on the Parties’ written submissions, pleadings, and evidence adduced. References to additional facts and allegations found in the Parties’ written submissions, pleadings, and evidence will be made, where relevant, in connection with the legal analysis that follows. While the Panel has considered all the facts, allegations, legal arguments, and evidence submitted by the Parties in the present proceedings, it refers in its award only to the submissions and evidence that it deems are necessary to explain its reasoning.

### **B. The proceedings before the Disciplinary Board of the IIHF**

4. The IIHF Ice Hockey World Junior Championship (WM20) (the “Championship”) is an event organized under the applicable IIHF rules and regulations. More specifically, the Championship is mentioned as one of the competitions of the IIHF by Article 401 of the IIHF Bylaws. The 2018 edition of the Championship was held from 26 December 2017 until 5 February 2018 in Buffalo, New York, United States of America, and was subject to the 2018 IIHF Championship Regulations WM20.

5. On 5 February 2018, the Appellants' team lost to the representative team of Canada in the final game of the Championship by the score of 3-1.
6. During the post-game ceremony, the Appellants immediately removed the silver medals placed around their neck and did not wear them around their neck for the remaining time of the official celebration.
7. On 29 March 2018, the IIHF Disciplinary Board initiated disciplinary proceedings against the Appellants, whose conduct during the post-game ceremony was considered to be in breach of Article 5.5.8 of the 2018 IIHF Championship Regulations WM20 ("Article 5.5.8").
8. On 12 April 2018, the IIHF Disciplinary Board received the following written statements of the Appellants:
  - Mr Tomas Montén: *"I'm sorry about taking off my medal at the WJC. After I got my medal I walked down the blue line hugging my players and felt it was in the way and took it off and held it in my hand. I didn't reflect on it at the time. I am sorry if I offended anyone with my act but it was nothing against anybody. I really enjoyed being part of the world juniors"*.
  - Mr Nizze Landén: *"IN (sic) the disappointment and frustration, I felt after the final game, I do not even remember that I did. If I'm wrong and someone has gotten upset, I am sorry, and I apologize so much!"*
  - Mr Henrik Stridh: *"In disappointment after the loss I took it off. If somebody got upset I apologize"*.
9. On 30 April 2018, the IIHF Disciplinary Board adopted a decision (the "Appealed Decision") finding as follows:

*"(...)*

  - 1 *Mr. Tomas Montén is suspended from acting as head coach or assistant coach or in any other position as a team official for the first three games at the 2019 IIHF Ice Hockey World Junior Championship (WM20).*
  - 2 *Mr. Nizze Landén is suspended from acting as assistant coach or in any other position as a team official for the first two games at the 2019 IIHF Ice Hockey World Junior Championship (WM20).*
  3. *Mr. Henrik Stridh is suspended from acting as assistant coach or in any other position as a team official (sic) the first two games at the 2019 IIHF Ice Hockey World Junior Championship (WM 20)"*.
10. In the Appealed Decision, in fact, the IIHF Disciplinary Board considered the explanations given by the Appellants as either insufficient to excuse their behaviour or unconvincing. It held that a suspension for several games was *"necessary and adequate"*. On account of his position as Head Coach, a heavier sanction was imposed upon Mr Tomas Montén. In addition, the IIHF Disciplinary Board considered:

*"the violation of Article 5.5.8 of the 2018 IIHF Championship Regulations WM 20 as severe with regard to the importance of the IIHF Ice Hockey Junior World Championship and the closing ceremony, where the best two teams of the championship are honored for their efforts and results in front of the spectators watching the ceremony in the arena and on television. Taking off the silver medals presented to the members of the team shows*

*not only a disrespect against the spectators and the organizers of the championship, but also a disrespect against their opponents and winners of the championship; this behavior has to be considered as highly unsportsmanlike and is a breach of conduct that brings the sport of ice hockey into disrepute; it is not compatible with the idea of sport as a fair competition between the teams involved in order to determine the best team of the tournament. The actions in question cannot be excused by disappointment or even frustration not to have won the championship. Losing a game is part of any competition and of the sport of ice hockey, and does not excuse any unfair and unsportsmanlike behavior; to be 'frustrated' by the loss of a game is not the right attitude".*

### III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

11. On 21 May 2018, Mr Henrik Stridh, Mr Nils-Erik Landén and Mr Tomas Montén each lodged a separate Statement of Appeal against the Appealed Decision in accordance with Article R47 *et seq.* of the Code of Sports-related Arbitration (the "Code") with the Court of Arbitration for Sport (the "CAS"). The matters were registered by the CAS Court Office under reference CAS 2018/A/5747 *Henrik Stridh v. International Ice Hockey Federation*, CAS 2018/A/5748 *Mr Nils-Erik Landén v. International Ice Hockey Federation* and CAS 2018/A/5749 *Mr Tomas Montén v. International Ice Hockey Federation*.
12. On 25 May 2018, the CAS Court Office acknowledged receipt of each of the Statements of Appeal filed by the Appellants as well as of their payment of the CAS Court Office fee. It took note of their nomination of Mr Edward Canty as arbitrator and invited the Parties to comment within three days on whether they agreed to consolidate the three procedures.
13. On 28 and 29 May 2018 respectively, the Appellants and the IIHF confirmed to the CAS Court Office that they agreed to the consolidation of the procedures.
14. On 29 May 2018, each of the Appellants informed the CAS Court Office that their Statement of Appeal was to be considered as their Appeal Brief.
15. On 29 May 2018, the CAS Court Office advised the Parties that the procedures were consolidated in accordance with Article R50 of the Code. It acknowledged receipt of the Appellants' letters of 29 May 2018 and invited the IIHF to submit to the CAS a single Answer for the three appeals within twenty days.
16. On 4 June 2018 and within the prescribed deadline, the IIHF informed the CAS Court Office that it was appointing Prof. Dr. Martin Schimke as arbitrator.
17. On 15 June 2018, the IIHF applied for a 5-day extension of its deadline to file its Answer, which was eventually granted in accordance with Article R32 of the Code.
18. On 18 June 2018, the CAS Court Office informed the Parties that the Panel to hear the case had been constituted as follows: Prof. Luigi Fumagalli, President, Mr Edward Canty and Prof. Dr. Martin Schimke, Arbitrators.
19. On 27 June 2018, the CAS Court Office acknowledged receipt of the Answer filed on 25 June 2018 and took note of the opinion expressed by the IIHF that a hearing was not necessary in

these proceedings. The CAS Court Office invited the Appellants to state by 4 July 2018 whether their preference was for a hearing to be held.

20. On 4 July 2018, the Appellants confirmed to the CAS Court Office that they preferred for the matter to be decided solely on the basis of the Parties' written submissions.
21. On 6 September 2018, the CAS Court Office advised the Parties that the Panel deemed itself sufficiently well-informed to decide on the dispute without the need to hold a hearing.
22. On 13 September 2018, the CAS Court Office sent to the Parties the Order of Procedure, which was returned duly signed by Appellants and Respondent on 17 and 14 September 2018, respectively.

#### **IV. THE SUBMISSIONS OF THE PARTIES**

##### **A. The Appeal**

23. The three Appeal Briefs filed in these proceedings were worded in an identical fashion, except for the name of each Appellant. They contain the following requests for relief:

##### ***“Request for Relief***

- 2.1 *At first hand, the Appellant requests that the Court of Arbitration for Sport sets aside the sanction imposed on the Appellant in the Appealed Decision.*
- 2.2 *Second, if the Court of Arbitration for Sport does not set aside the sanction imposed on the Appellant in the Appealed Decision, the Appellant requests that the Court of Arbitration for Sport amends the sanction to a reprimand or any other less severe sanction than the imposed, as the Court of Arbitration for Sport deems appropriate”.*

24. The Appellants' submissions, in essence, may be summarized as follows:
  - The sanction imposed on the Appellants is based exclusively on a violation of Article 5.5.8, which is not applicable to coaches.
  - According to the clear wording of this provision, only the players are required to wear the medal around the neck during the entire closing ceremony and the following post-game mixed zone and media conference procedures.
  - The imposed sanctions are disproportionate.

##### **B. The Answer**

25. In its Answer, the IIHF submitted the following requests for relief:

*“(…) the IIHF hereby respectfully requests CAS to:*

1. *Uphold the decision dated 30 April 2018 rendered by the IIHF Disciplinary Board;*

2. *Determine that all Parties are responsible for their own costs associated with this Appeal*”.

26. The submissions of the IIHF, in essence, may be summarized as follows:

- The gold medal game of the Championship is an event attended by thousands of spectators and watched by millions of viewers over the world. Bearing in mind the level of the competition, one must expect high standards of behaviour from all the people involved, from the players as well as from the coaches. It is against this background that Article 5.5.8 was adopted. The purpose of this provision is to ensure *“that the teams performing at the highest level of junior ice hockey and on an international stage set a good example for ice hockey fans, coaches and players from all over the world”*.
- Article 5.5.8 applies to the players as well as to the coaches. For the IIHF, the coaches are essential and form an integral part of an ice hockey team. No distinction is made between the players and the coaches and this explains why, unlike in other sports, medals are handed not only to players but also to team officials.
- *“Consequently, the IIHF not making a distinction between players and coaches when providing medals to the team, extends to the conduct that is expected from players and team officials once they receive the medal; namely, that they must equally observe the principles of fair play, sportsmanship and respect in wearing their medals for the duration of the closing ceremony”*.
- The Appellants’ responsibility is all the more important that, due to their position, they play a key role in developing sport and must serve as a role model with regard to the principles of fair play, sportsmanship and respect. This is particularly true *“in prominent junior level tournaments where players are experiencing ice hockey at a high level for the first time in their careers and where coaches’ actions have the potential to shape young players sporting integrity well into the future”*. In such a context, the Appellants’ position that only the players are required to wear the medals during the entire closing ceremony is not compatible with the obvious purpose of Article 5.5.8.
- In order to interpret Article 5.5.8, this provision must be read in conjunction with IIHF Bylaw 1101, which sanctions *“Member National Associations, clubs, officials, coaches, and players if they infringe the Statutes, Bylaws, Regulations/ Codes or Official Playing Rules of the IIHF, or if they violate the good order of the sport of ice hockey or in-line hockey, or bring the sport of ice hockey or in-line hockey into disrepute”*.
- In its Appealed Decision, the IIHF Disciplinary Board held that the Appellants’ behaviour had to be considered as *“a breach of conduct that brings the sport of ice hockey into disrepute”*. Thereby, the IIHF Disciplinary Board made a direct reference to IIHF Bylaw 1101, which is applicable in the matter at hand and which expressly lays down sanctions against coaches.
- Taking into consideration the circumstances of the case, the sanctions were proportionate and appropriate.

## V. JURISDICTION

27. Article R47 of the Code provides as follows:

*An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body.*

28. The jurisdiction of the CAS, which is not disputed, derives from Article 25 of the applicable IIHF Statutes and Article R47 of the Code. It is further confirmed by the Order of Procedure duly signed by the Parties.

29. It follows that the CAS has jurisdiction to decide on the present dispute.

30. Under Article R57 of the Code, the Panel has the full power to review the facts and the law.

## VI. ADMISSIBILITY

31. Article R49 of the Code provides as follows:

*In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late.*

32. The Appeals are admissible as the Appellants submitted them within the deadline provided by Article R49 of the Code as well as by the Appealed Decision, which confirms that it “*is final within the IIHF [and that it] may be appealed to the [CAS] within 21 days after this document has been received*”. It complies with all the other requirements set forth by Article R48 of the Code.

## VII. APPLICABLE LAW

33. Article R58 of the Code provides the following:

*The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to 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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.*

34. Pursuant to IIHF Bylaw 607 para. 4,

*Member National Associations entering teams into IIHF Ice Hockey World Championships must fulfil all conditions as specified in the Statutes, Bylaws, Regulations/Codes and Official Playing Rules including those rules relating to the use of IIHF supplied uniforms, advertising and the display of manufacturers' identification on equipment as specified in the IIHF Championship Regulations and IIHF Media & Marketing Guidelines*

*for Teams and Players at IIHF Ice Hockey World Championship. All teams, players, team officials and game officials must follow these regulations, including but not limited to warranting that all players and team officials sign all required forms associated with the Championship. Certain Violations of the IIHF Championship Regulations and Team Entry Form will result in automatic penalties as specifically defined in the IIHF Championship Regulations.*

35. As a result, and in light of the foregoing, subject to the primacy of the applicable IIHF regulations, Swiss Law shall apply complementarily, whenever warranted.
36. The relevant facts at the basis of these proceedings arose on 5 January 2018, *i.e.* after May 2014 and May 2017, which are the dates when the IIHF Statutes and Bylaws, edition 2014 – 2018, the 2018 IIHF Championship Regulations WM20 and the 2018 IIHF Disciplinary Code came into force. These are the editions of the rules and regulations under which the present case shall be assessed.

## VIII. MERITS

37. The issue to be resolved is whether, on the basis of Article 5.5.8, the Appellants were required to wear the silver medal around their neck during the entire closing ceremony. According to the Appellants, the literal interpretation of the provision clearly rejects such an obligation, whereas the IIHF is of the view that the rule must be applied according to its spirit and not according to its letter.

### A. In general

38. There is no unified view on how articles of associations should be interpreted in Switzerland (FLEISCHER H., *Die Auslegung von Gesellschaftsstatuten: Rechtsstand in der Schweiz und rechtsvergleichende Perspektiven*; GesKR 4/2013, p. 8; ZEN-RUFFINEN P., *Droit du Sport*, Schulthess 2002, p. 63). The issue is whether the articles of associations should be interpreted by using the principles applied to the interpretation of contract or to the interpretation of laws. As the articles of association form the contractual basis of an association - a private law institution - it can be argued that they have much in common with contracts and should therefore be interpreted through the contractual principles of the subjective intent of the parties and good faith (FORSTMOSER/MEIER-HAYOZ/NOBEL, §7 N 4; ZELLER, §11 N 129-133; VALLONI/PACHMANN, p. 25). However, articles of association also set forth constitutive principles which may have effects on others beyond the original members of the association, and should therefore be subject to the more objective approach followed with respect to statutory laws (FORSTMOSER/MEIER-HAYOZ/NOBEL, §7 N 3; CAS 2013/A/3365; CAS 2013/A/3366 para. 140 ss).
39. According to the Swiss Federal Tribunal (SFT), the statutes of a private legal entity are normally interpreted according to the principle of good faith, which is also applicable to contracts (Decision of the SFT 4A\_392/2008, 22 December 2008, at 4.2.1 and references). However, the method of interpretation may vary depending on the nature and dimension of the legal person involved. As regards to the statutes of larger entities, it may be more appropriate to have



recourse to the method of interpretation applicable to the law, whereas in the presence of smaller associations, the statutes may more legitimately be interpreted by reference to good faith (Decision of the SFT 4A\_600/2016, 28 June 2017, consid. 3.3.4.1 and references).

40. IIHF is a very large legal entity. According to its own website, IIHF *“features 76 member associations, each of which is the national governing body of the sport in its nation. Besides controlling the international rulebook, processing international player transfers, and dictating officiating guidelines, the IIHF runs numerous development programmes designed to bring hockey to a broader population. The IIHF also presides over ice hockey in the Olympic Games, and over the IIHF World Championships at all levels, men, women, juniors under-20, juniors under-18 and women under-18. Each season, the IIHF in collaboration with its local organising committees, runs around 25 different World Championships in the five different categories”*. It is safe to say that the regulations of the IIHF have effects, which are felt worldwide, and should therefore be subject to the more objective interpretation principles.
41. Under Swiss law, the methods of interpretation of the law are the following:
  - the literal interpretation;
  - the systematic interpretation;
  - the principle of purposive interpretation; and
  - the historical interpretation.
42. According to the SFT, the starting point for interpreting is indeed its wording (literal interpretation). There is no reason to depart from the plain text, unless there are objective reasons to think that it does not correspond in all respects to the true meaning of the provision under review (SFT 4A\_600/2016, 28 June 2017, consid. 3.3.4.2). This may result from the drafting history of the provision, from its purpose, or from the systematic interpretation of the law. Where the text is not entirely clear and there are several possible interpretations, the true scope of the provision will need to be narrowed by taking into account all the pertinent factors, such as its relationship with other legal provisions and its context (systematic interpretation), the goal pursued, especially the protected interest (teleological interpretation), as well as the intent of the legislator as it is reflected, among others, from the drafting history of the piece of legislation in question (historical interpretation) (ATF 132 III 226 at 3.3.5 and references ATF 131 II 361 at 4.2).
43. This search for a true meaning beyond the clear literal text, however, finds a limit. As the Swiss Federal Tribunal put it (SFT 4A\_600/2016, 28 June 2017, consid. 3.3.4.2), in fact, according to the criminal law principle *nulla poena sine lege*, *“the judge may conduct an extensive interpretation of the legal text in order to determine its true meaning, which is the only one that complies with the internal logic and purpose of the provision in question. If an interpretation in accordance with the spirit of the law deviates from the letter of the legal text, to the detriment of the accused, the aforementioned principle prevents a judge from relying on elements that the law does not contain to create new punishable acts”*. It is to be noted, however, that *“in the application of disciplinary sanctions imposed by private law associations such as sports federations, the automatic application of criminal law concepts such as the presumption of innocence and the principle in dubio pro reo ... is not self-evident”*.

44. In addition, the Panel notes that the “principle of legality” (*principe de légalité* in French), has been constantly applied in the CAS jurisprudence as requiring that the offences and the sanctions be clearly and previously defined by the law and precluding the “adjustment” of existing rules to apply them to situations or behaviours that the legislator did not clearly intend to penalize. In that regard, CAS arbitrators have drawn inspiration from this general principle of law in reference to sports disciplinary issues, and have formulated and applied what has been termed as a “predictability test”. Indeed, CAS awards have consistently held that sports organizations cannot impose sanctions without a proper legal or regulatory basis and that such sanctions must be predictable. In other words, offences and sanctions must be provided by clear rules enacted beforehand (CAS 94/129, CAS OG 98/002, CAS 2001/A/330, CAS 2007/A/1363, CAS 2016/A/4921 & 4922).

## **B. In the case at hand**

45. Article 5.5.8 of the 2018 IIHF Championship Regulation WM20 provides so far as material as follows:

### *5.5.8. Victory and Closing Ceremony*

*The Closing Ceremony plan shall be presented for the approval of the Chairman of the Directorate before the first quarterfinal game and should follow approximately the script below:*

*The bronze medal winning teams will be declared immediately after the post-game ceremony (hand out of the best player of the game award) of the bronze medal game. The Medals and award will be handed out on the ice and the anthem of the winning team will be played.*

*The gold and silver medal winning teams will be declared immediately after the post-game ceremony (hand out of the best player of the game award) of the final game.*

*(...)*

*Both teams will stand on their respective blue lines facing each other.*

*After that the on-ice officials awards will be handed out and the referees will be called forward to receive their commemorative medals.*

*Then the silver medals are presented to the players and team officials by IIHF Council Members or representatives who place the medals around the necks of the players and team officials. The medals have to be worn by the players around the neck in respectful manner for the duration of the closing ceremony and the following post-game mixed zone and media conference procedures. Any infraction of that rule will be reported to the IIHF Disciplinary Board and could result in additional disciplinary sanctions under IIHF Bylaw 1001. The awarded players should then skate forward to the opposing gold medal winning team for the handshake and lines up again along the blue line, before the captain will be called again forwarded to receive the 2nd place award.*

*Then the gold medals are presented to the players and team officials by IIHF Council Members or representatives who place the medals around the necks of the players and team officials.*

*When all medals are presented the team lines up along the blue line and the national anthem of the gold medal team will be played while the flags of the three medal winning teams are hoisted.*

*After the anthem of the winning team the silver medal winning team leaves the ice through the mixed zone exit.*

(...).

46. The following observations can be made from the plain text of the above provision:

- *“The Closing Ceremony (...) should follow approximately the script below (...)”*: Such a phrasing (in particular the words “*should*” and “*approximately*”) suggests that Article 5.5.8 merely sets a framework for the closing ceremony and for the procedure to follow for awarding the medals. Unless otherwise stated, it does not seem to implement binding standards but, on the contrary, appears to give a certain degree of freedom to all the persons involved.
- Para. 2 of Article 5.5.8 establishes the guidelines to follow with respect to the post-game ceremony of the bronze medal game. Nowhere is it indicated that a) the bronze medals have to be presented to the players and/or to the coaches, b) the bronze medals have to be placed around the neck of the players and/or of the coaches and c) the bronze medals have to be worn for the duration of the post-game ceremony. According to this para. 2 of Article 5.5.8, the bronze medals just need to be “*handed out on the ice and the anthem of the winning team will be played*”.
- Para. 7 of Article 5.5.8:
  - In the first sentence of this paragraph, it is expressly stipulated that a) “*the silver medals are presented to the players and team officials*” and that “*the medals will be placed around the necks of the players and team officials*”.
  - The rest of the paragraph does not make any mention of the team officials anymore.
  - In the second sentence of para. 7, it is only specified that the “*medals have to be worn by the players around the neck in respectful manner for the duration of the closing ceremony (...)*”. As pointed out above, the “*team officials*” are not mentioned.
  - The third sentence of para. 7 warns that “*Any infraction of that rule will be reported to the IIHF Disciplinary Board and could result in additional disciplinary sanctions under IIHF Bylaw 1001*”. “*That rule*” can only refer to the one mentioned in the second sentence of Para. 7 of Article 5.5.8, which exclusively relates to the players. It is also noteworthy to emphasise that “*IIHF Bylaw 1001*” relates to “*IIHF Ice Hockey U18 Women’s World Championships*”. It is IIHF Bylaw 1100, which implements the disciplinary sanctions.
- Para. 8 of Article 5.5.8 governs the attribution of the gold medals, which are to be “*presented to the players and team officials*” and placed “*around the necks of the players and team officials*”. Here too, there is no indication that the gold medals have to be worn for the entire duration of the post-game ceremony.
- The remaining part of Article 5.5.8 does not make any reference to medals worn around the neck.

47. It results from the above that according to the wording of Article 5.5.8:

- The bronze medals just need to be “*handed out on the ice*”. The recipients (players and/or coaches) are not specified and there is no requirement to wear the medals at all.
- The silver medals have to be placed around the necks of the players and the team officials but have to be worn only by the players during the entire closing ceremony.

- The gold medals have to be placed around the necks of the players and the team officials, but none of them are required to wear such medals during the entire closing ceremony.
48. In other words and pursuant to the clear wording of Article 5.5.8, only the players of the losing finalist of the Championship have the obligation to wear the medals “*around the neck in respectful manner for the duration of the closing ceremony and the following post-game mixed zone and media conference procedures*”. Such rule is understandable considering that the team losing a final does not celebrate its performance like the winners of the gold medal match or of the bronze medal match. However, there is no mention of such obligation for the team officials, who in the same way as the players receive medals around their neck. In other words, the plain wording of Article 5.5.8 does not extend to coaches the obligation to wear the medals throughout the entire closing ceremony. The text is therefore clear and the result of its literal interpretation appears to correspond to the true meaning of the provision. In fact, it appears to the Panel that it could have been the rule maker’s intention to exempt the coaches from the duty to wear the silver medals during the whole post-game ceremony. If such was not the case, then why did the legislator not keep mentioning the coaches together with the players as it did in the first sentence of the para. 7 of Article 5.5.8? And even if it was not a deliberate choice of the rule maker but a gap in the rules, the situation would not be different. In addition, the Panel notes that the above interpretation is confirmed by its context: Article 5.5.8 in fact appears to put specific emphasis on the “*awarded*” players (and not on the coaches) who, wearing the silver medals, have the obligation to skate towards the players of the winning team for a handshake.
49. In addition, the Panel finds that a different conclusion, beyond the literal meaning of the provision, and in the absence of an indication that the literal meaning does not correspond in all aspects to the (different) true meaning (SFT 4A\_600/2016, 28 June 2017, consid. 3.3.4.2), would amount to the creation of a “*new punishable act*” for the coaches, that they could not foresee. In this respect, the Panel agrees with the findings of the Panel in CAS 2016/A/4921 & 4922 (see para. 62 and references):
- Provisions of an association must meet the principle of nulla poena sine lege; i.e. it is axiomatic that in order for a person to be found guilty of a disciplinary offence, the relevant disciplinary code must proscribe the misconduct with which he or she is charged. It is equally axiomatic that, in accordance with the contra proferentem rule, the relevant provision with which the person is charged to be in breach will have to be strictly construed (nulla poena sine lege clara). It is not sufficient to identify a duty but it is also necessary to stipulate that a breach of such duty will attract disciplinary sanctions. Disciplinary regulations must be explicit as otherwise they become a tool of arbitrary decisions. However, a distinction must be made between broadly drawn provisions and ambiguous provisions; put differently, disciplinary provisions are not vulnerable to the application of the nulla poena sine lege clara rule merely because they are broadly drawn.*
50. In light of the above, the Panel holds that there is nothing in the language of Article 5.5.8 to suggest that the rule maker intended to extend the obligation to wear the medals for the whole duration of the closing ceremony not only to the coaches of the team coming second but also to the players and coaches of the teams coming first and third. If this was the real intention of the rule maker, it should and could have easily said so. With its requests for relief, the IIHF is trying to shift the burden on the CAS to complete Article 5.5.8 in a satisfactory manner. While there would be some logic to impose an obligation to players and coaches to wear their medal

during the ceremony (assuming that the coaches should set an example for the players to follow), such obligation must be clearly stated in the IIHF rules to be binding on coaches. It is not the task of the CAS to fill up gaps.

51. Accordingly, the Panel finds that, as things stand, only the players of the losing finalist team are required to wear the medal during the entire closing ceremony and the following post-game mixed zone and media conference procedures.
52. The IIHF claims that Article 5.5.8 must be read in conjunction with IIHF Bylaw 1101. According to this provision:

*The IIHF may sanction any person or entity, including but not be limited to, Member National Associations, clubs, officials, coaches, and players if they infringe the Statutes, Bylaws, Regulations/Codes or Official Playing Rules of the IIHF, or if they violate the good order of the sport of ice hockey or in-line hockey, or bring the sport of ice hockey or in-line hockey into disrepute, or if they violate the decisions of Council, Directorates or officials of the IIHF who are entrusted with the implementation of the Statutes, Bylaws, Regulations/Codes and/or Official Playing Rules.*

53. This allegation must be dismissed for the following two reasons:
- Neither the Appealed Decision nor Article 5.5.8 (which only mentions IIHF Bylaw 1001) makes any reference to IIHF Bylaw 1101. In its Appealed Decision, the IIHF Disciplinary Board exclusively criticised the Appellants for breaching Article 5.5.8. The fact that it used an expression which can also be found in IIHF Bylaw 1101 (“*a breach of conduct that brings the sport of ice hockey into disrepute*”) can certainly not constitute a valid notice for violating IIHF Bylaw 1101. Hence, by relying on IIHF Bylaw 1101 for the first time in its Answer in these proceedings, the IIHF is actually changing – with retrospective effect – the disciplinary infringement, which is at the basis of the sanction imposed upon the Appellants. Such an approach clearly violates the Appellants’ right to be heard.
  - IIHF Bylaw 1101 is a general provision, whereas Article 5.5.8 must be considered as *lex specialis*. In other words, the scope of Article 5.5.8 shall supersede the general provision. For the reasons set out above and under Article 5.5.8, the Appellants did not have the obligation to wear the silver medal for the whole duration of the post-game ceremony and, as a consequence, cannot be sanctioned under a more general provision for the same acts.

### **C. In conclusion**

54. In light of the foregoing consideration, the Panel finds that the Appellants did not violate the 2018 IIHF Championship Regulations WM20, in particular their Article 5.5.8. As a consequence, the Panel decides that the Appealed Decision must be set aside.
55. This conclusion makes it unnecessary for the Panel to consider the other requests submitted by the Parties.

## **ON THESE GROUNDS**

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

1. The appeals filed on 21 May 2018 by Mr Henrik Stridh, Mr Nils-Erik Landén and Mr Tomas Montén against the decision issued on 30 April 2018 by the IIHF Disciplinary Board are upheld.
2. The decision issued on 30 April 2018 by the IIHF Disciplinary Board is set aside.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.