

15 Years of the HCCH Washington Declaration

Session 6:
States that utilize best interests
assessments as guidelines in
relocation cases

Germany

Martina Erb-Klünemann, Family Court
Judge, Network Judge EJM and
International Hague Network of
Judges, Hamm/Germany

3 April 2025



**15 years later
not much news
from Germany**

**The German Judicial
Approach to Relocation**

Martina Erb-Klünemann

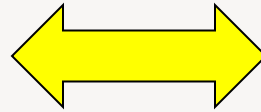
Judge

23-25 March 2010

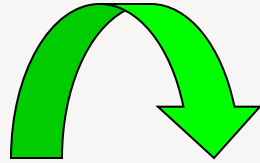
Washington

Relocation is a Question of Custody in Case of Joint Custodial Rights:

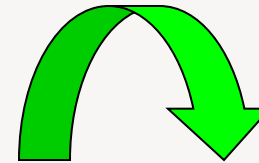
matters of everyday
life



matters of substantial
significance for the child



the primary caregiver
has the right to decide
alone



require agreement
or
transfer of custodial
rights

A decorative graphic on the left side of the slide consisting of five hexagons. One is orange, one is light gray, one is light blue, and two are white with thin brown outlines. They are arranged in a cluster, with the orange one at the top left, the light gray one below it, the light blue one at the bottom left, and the two white ones to the left of the others.

No Specific Relocation Procedure Proceedings on custody, § 1671 BGB


proceedings on contact

only on application
separate proceedings

proceedings on maintenance (including higher costs of access)

only on application
Separate proceedings

Procedural FAQ's

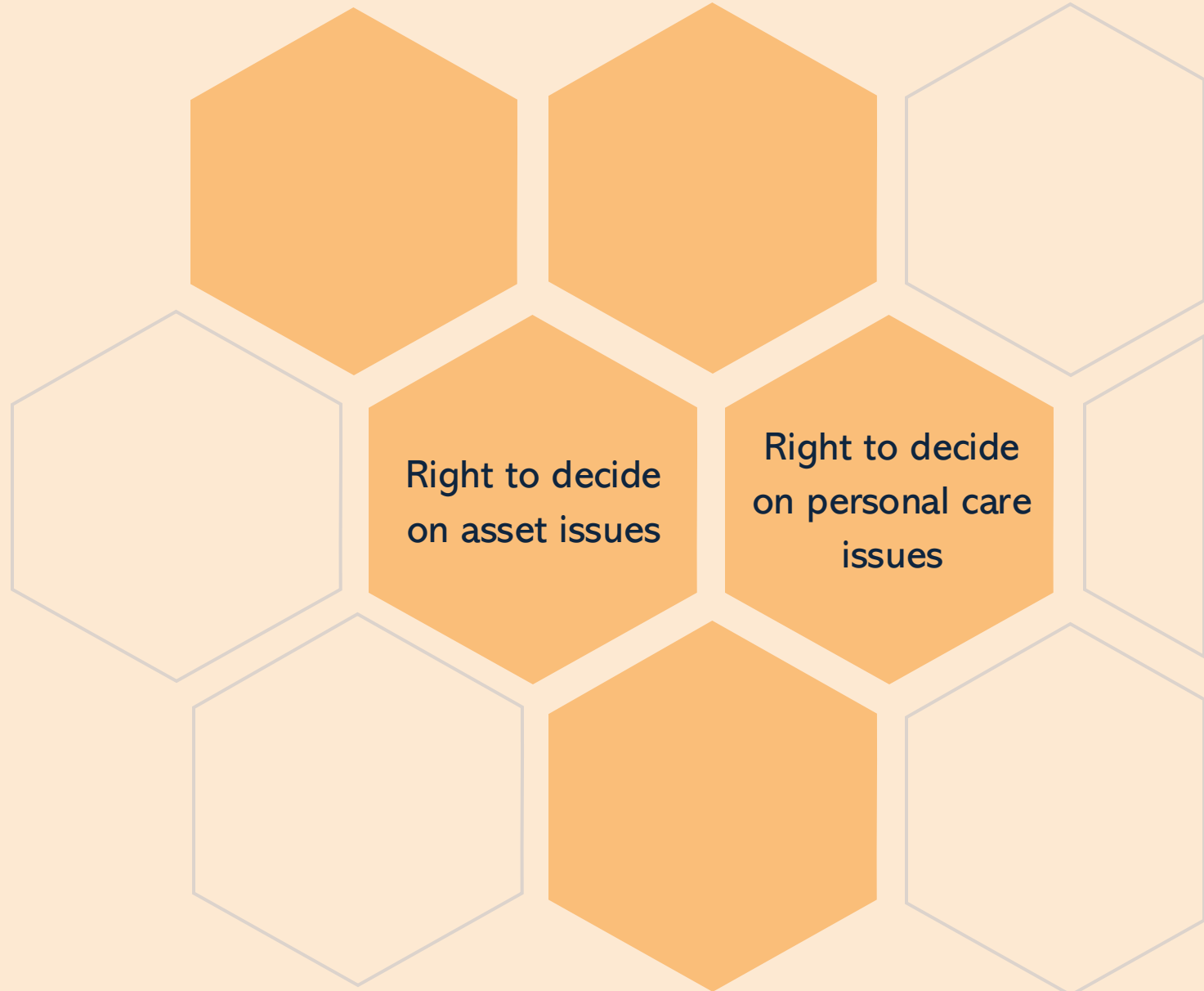
- Legal assistance available  subject to means and merits test
- No need for legal representation for proceedings on parental responsibility # maintenance
- Average time frame: difficult to foresee, 1st oral hearing within 1 month
- Average success rate: unknown
- Recognition and enforcement of a foreign relocation decision or agreement:
in so far as it is on parental responsibility: Art. 30 ff. Brussels IIb, Art. 23 ff. 1996 HC,
national law: §§ 108 ff. FamFG;
in so far as maintenance obligations are included: EU-Maintenance Regulation 4/2009, 2007
HC, §§ 108 ff. FamFG

Custody





Custody



Right to Decide on Personal Care Issues, § 1631 BGB

Education

Right to decide on
religious education

Care



**Right to determine
the residence**

„Aufenthaltsbestim-
mungsrecht“

Duty of supervision

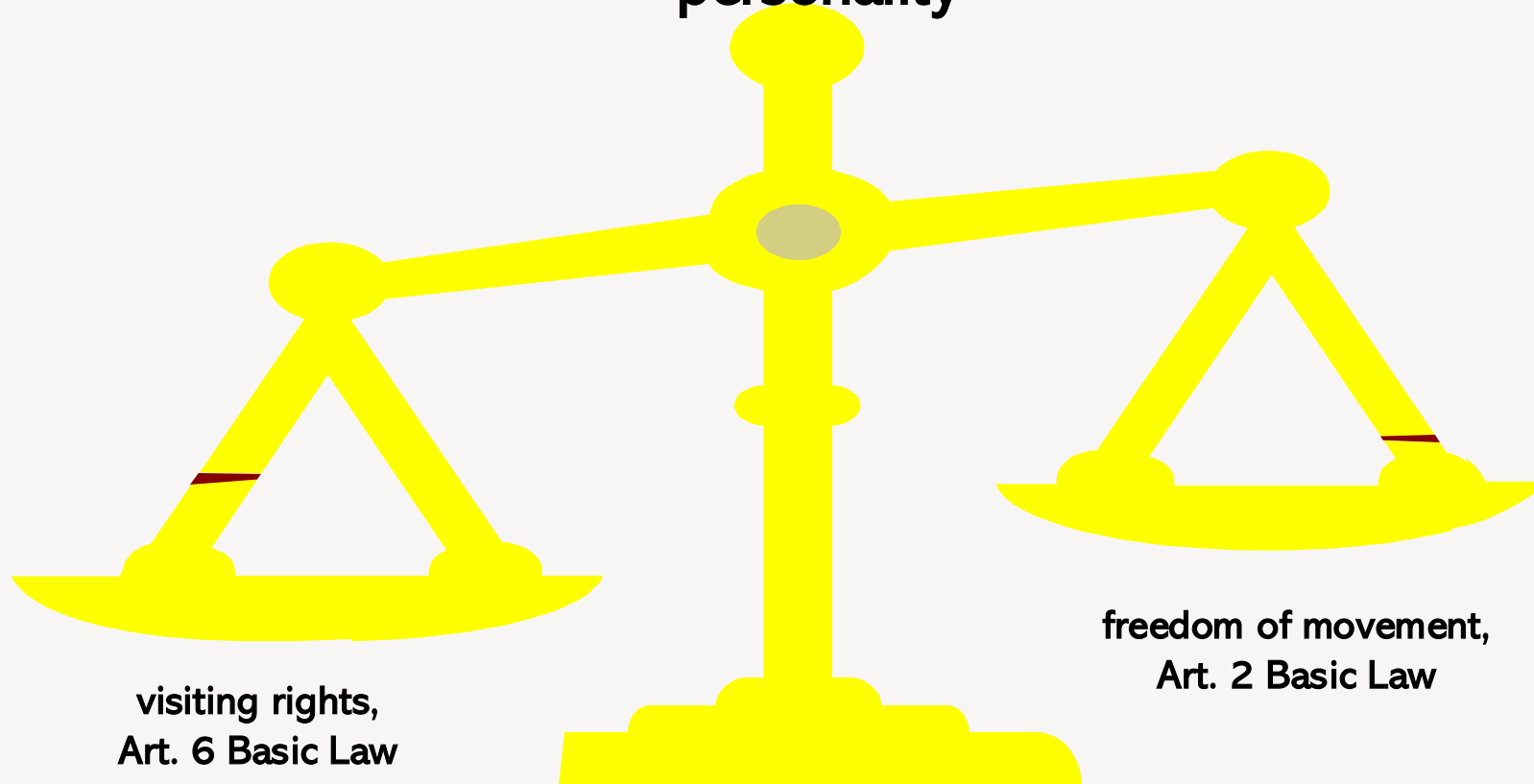
Right to determine
the name

Right to choose
school/ training

Right to decide on
health issues

Balance of Constitutional Rights

child's right of developing its
personality

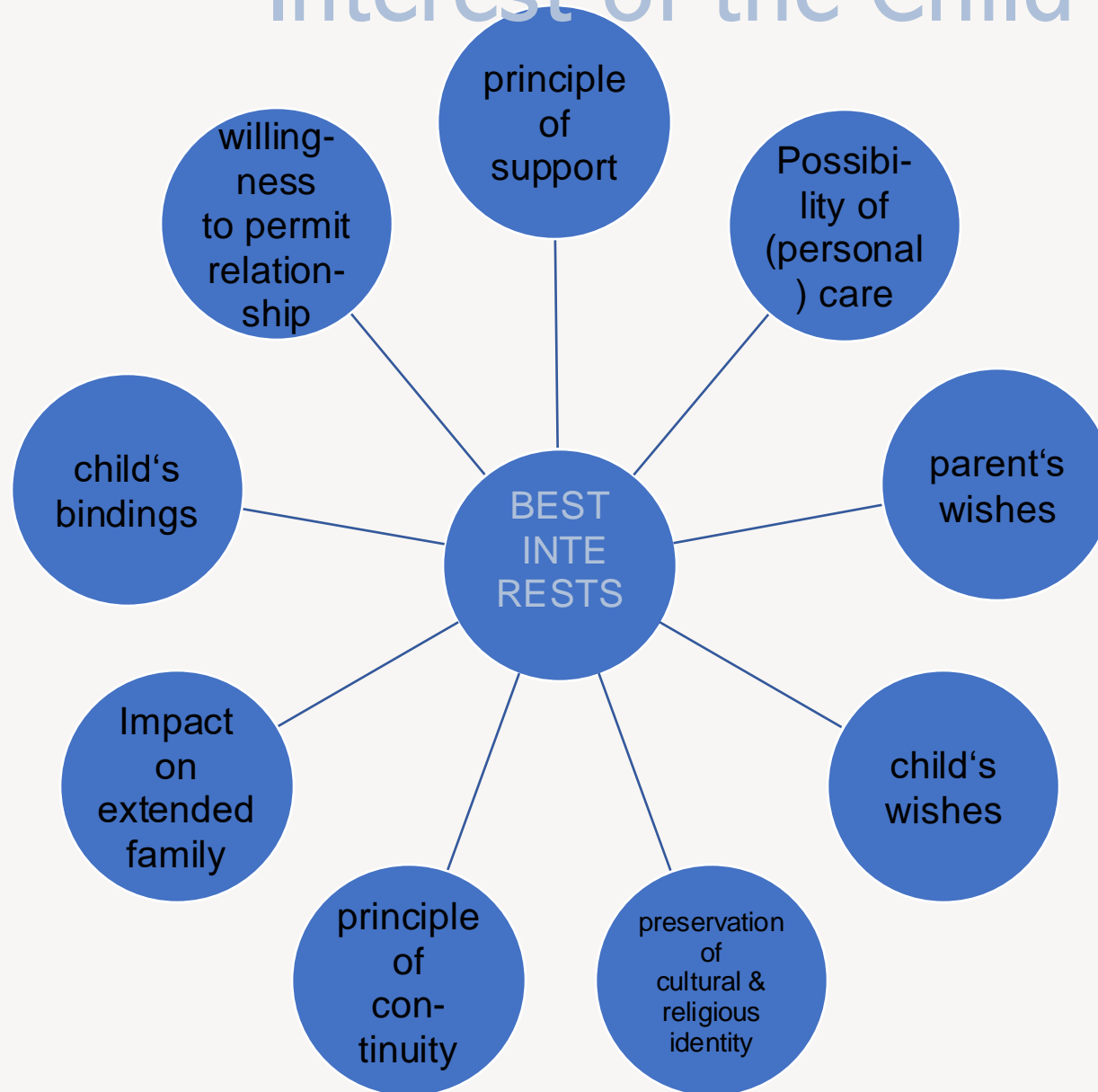


Balance of Child's Best Interest

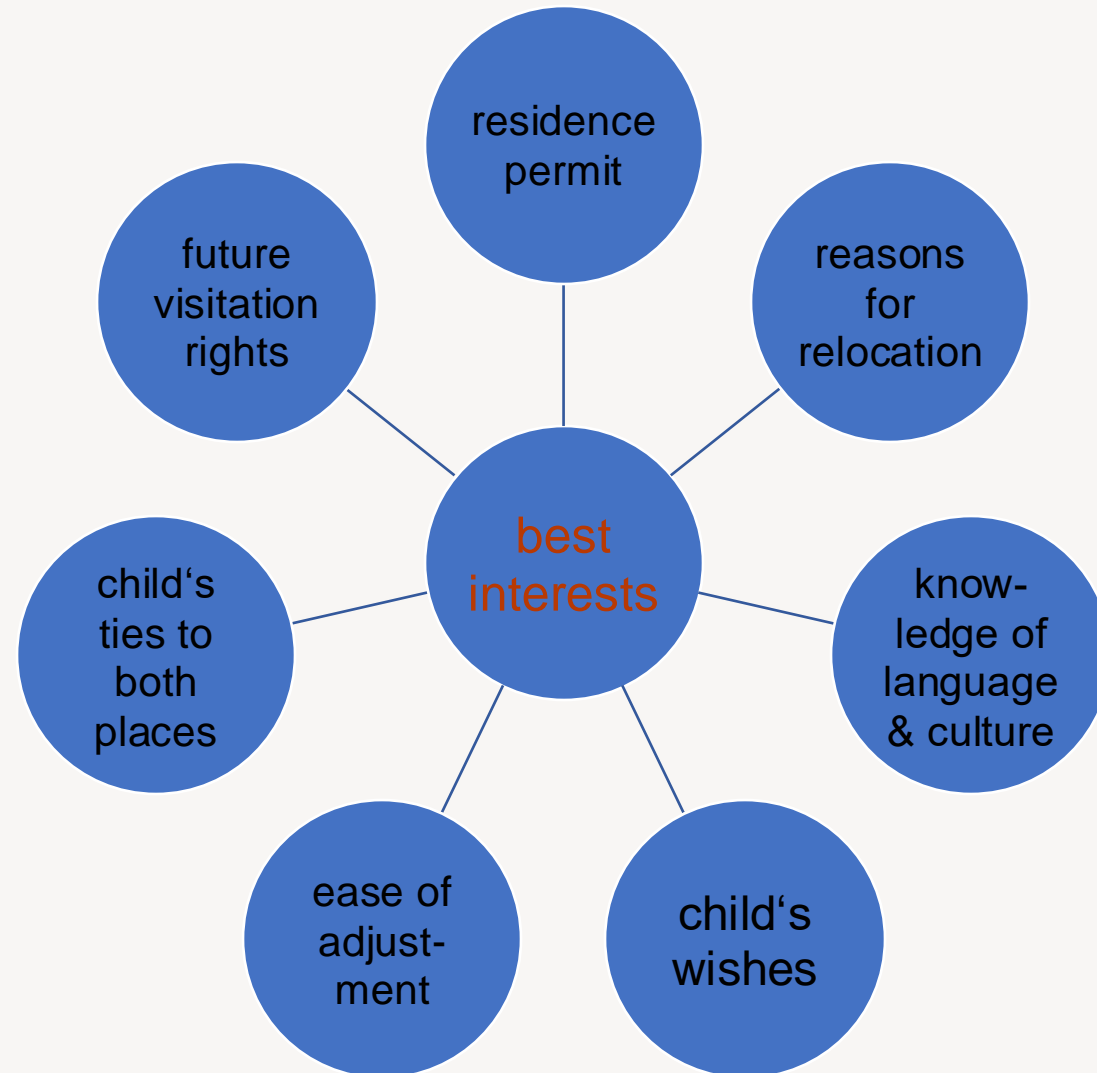
best solution for the individual child
in the individual situation



General Aspects of Best Interest of the Child



Special Aspects in Relocation Cases



German Jurisdiction

**Federal Court of Justice
6 December 1989
IVb ZB 66/88**

**In case of better
qualification of the
moving parent,
the visitation rights are
weaker
and have to step back.**

**Constitutional Court
20 August 2003
1 BvR 1532 / 03**

**When weighing the best
interest of the child the
court has to consider
together with other
aspects the effects on
access**

**Federal Court of Justice
28 April 2010
XII ZB 81/09
&**

**16 March 2011
XII ZB 407/10**

**What is the impact of a
relocation on the best
interest?**

**Which scenario is better
for the child: relocation
with one parent or staying
with the other parent?**

Some court decision

- Higher Regional Court Nürnberg, 10 UF 1899/11, 14 March 2012: relocation of ch (1) with m to Ireland, expert opinion, primary caregiver, return to home State, not for limiting access
- Higher Regional Court Frankfurt, 7 UF 67/12, 18 June 2013: relocation of ch. (?) with m. to her home State Turkiye, good reasons: wider family, will of the ch, declaration to do everything to guarantee contact
- Higher Regional Court Frankfurt, 7 UF 2/17, 2 February 2017: no relocation of ch. (6) with m. to SA, expert opinion, no binding tolerance of m, complete relationship breakdown of ch. with f., unclear living conditions in SA
- Higher Regional Court Brandenburg, 13 UF 174/17, 6 November 2018: no relocation of ch (12) with father to Andorra, expert opinion, wish of the ch to relocate but minimum economic standards not guaranteed, not compatible with best interests

Relocation following an abduction?

- The abduction might be a hint at limited educational abilities.
- Because of the aspect of continuity the abductor might gain the right to relocate.

- **Higher Regional Court Düsseldorf, 3 UF 173/20, 2 March 2021:**

abduction of ch by mother from Germany to Armenia, in Armenia refusal of return under 1980 HC, no right to f to relocate ch back to Germany, m primary caregiver, abduction only restriction in m's capacity for education, ongoing bindings to f., his access more difficult, need for good organisation of contact

Access & Costs of Access

- Two separate proceedings
- Only on application of a party
- Costs of access

= maintenance

= compulsory representation by lawyers

= court weights up whether allocation of costs after relocation, aim: no obstruction of access

Substantive Law FAQs

- Consideration given to whether the State to which a Party wants to relocate is a Party to the 1980, 1996 or 2007 Convention?

No. Proceedings on access and maintenance are separate proceedings on application

- Impact of DA/DV allegations in relocation proceedings in your State?

No decision known

direct as well as indirect DV is a negative factor when evaluating educational suitability

reasons to relocate are a factor when evaluating the binding tolerance: Are the reasons comprehensible? For example: return to home country, DA/DV

Compliance with the 2010 Washington Declaration

- 1. Legal proceedings available ✓ strong encouragement to make use of them! ? some information available for parents, children, professionals by ZAnK/ ISS
- 2. Need for reasonable notice is encouraged ? question of parental responsibility and educational abilities
- 3.- 6. Relevant factors ✓
- 7. 1980 and 1996 HC ✓
- 8. Promotion of voluntary settlements ✓ Art. 25 Brussels IIb, Art. 31 lit. b) 1996, § 156 FamFG
- Views of the child ✓ Art. 21 Brussels IIb, § 156 FamFG
- 9. Enforcement ✓ no need for German orders; foreign orders: European, international or national law
- 10. generally yes, but new factual situation because of longer distances
- 11. DJC: generally ✓ , but more possibilities in relocation cases
- 12. Research ?

My ideas in 2010

- appropriate consideration of cultural differences  in the meanwhile
- better global legal certainty
- Guide to Good Practice Relocation ?!

Possibilities for improvements in Germany (2025)



Better information of
rights and limits for
parents

**Greater sensibility of courts
with granting the right to
decide on the relocation**

More DJC

**Greater attention to
ongoing contact
also online**

A decorative pattern of hexagons in various colors (blue, orange, grey, dark blue) and outlines, arranged in a honeycomb-like structure on the left side of the slide.

Thank you for your attention!

CV

MM

MM