

Children's Exposure to Second-Hand Smoking in Households

Children's Rights vs Privacy Rights of Caretakers

Esen Wortmann, LL.M.

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Please, mark the answers applying to you:	Conflict of Interest /Yes – No (if yes, which)
Within the past 5 years, have you received speaker compensation fees from the pharmaceutical industry, tobacco industry or e-cigarette industry or their lobby organizations?	No
Within the past 5 years, have you received consultation fees from the pharmaceutical industry, tobacco industry or e-cigarette industry or their lobby organizations (Advisory Boards)?	No
Within the past 5 years, have you received financial support for projects of the pharmaceutical industry, tobacco industry or e-cigarette industry or their lobby organizations?	No
Do you have commercial connections with manufacturers or distribution organizations for tobacco products, nicotine substitute products or e-inhalation products which are mentioned within the scope of the 16th German Conference on Tobacco Control (if relevant)?	No
Do you have commercial connections with competitors of manufacturers or distribution organizations for tobacco products, nicotine substitute products or e-inhalation products which are mentioned within the scope of the 16th German conference for tobacco control (if relevant)?	No
Do you have other connections with the pharmaceutical industry, tobacco industry or e-cigarette industry or their lobby organizations?	No
Please, describe potential other conflicts of interest : —	

Herewith I declare that I have no conflicts of interest within the scope of the 17th German Conference on Tobacco Control.

SURNAME , FIRST NAME (Capitals)

WORTMANN, Uğur Esen

Date and signature

02.12.2019, f. Wortmann

Outline

- **Legal Introduction** to the International Regulation
- Triangular Relationship between Children, Caretakers and States
 - Children's Rights
 - Caretaker's Right to Privacy
 - States Parties Responsibilities
- Problem: Overlap of the Rights
- The Balance: An Analogous Study
- Conclusion

Legal Introduction to the International Regulation

- Framework Convention of Tobacco Control (FCTC) (out of today's discussion)
- International Convention on the Rights of the Child (CRC)
- International Covenant on Civil and Political Rights (ICCPR)
- European Convention on Human Rights (ECHR)

Triangular Relationship between Children, Caretakers and States



International Convention on the Rights of the Child



196
Ratifications

1 Signatory

Most ratified
international
agreement

Children's Right

- Article 3 of CRC – Best Interest of the Child
- Article 6 of CRC – Right to Life, Survival and Development
- Article 24 of CRC – Right to Health

Article 3: Best Interest of the Child

"In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."

General Comment No.5 Para. 12 says;

- Substantive Right
- Fundamental and Interpretive Legal Principle
- Rule of Procedure in Legal Proceedings

Article 6: Right to Life, Survival and Development

"States Parties recognize that every child has the inherent right to life."

States Parties shall ensure to the maximum extent possible the survival and development of the child."

General Comment No.5 Para. 12 says;

-Better physical, mental and social development

Article 24: Right to Health

"States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health..."

"States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures: ...taking into consideration the dangers and risks of environmental pollution..."

Article 24: Right to Health

- General Comment No. 15 Para. 49 explicitly says;
- Smoke-free environment is a core requirement for a healthy upbringing and development.
- Smoke-free environment is a part of the obligation to provide adequate housing for children.

Caretakers' Right to Privacy

- Article 17 of ICCPR

"No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation."

- Article 8 of ECHR

"Everyone has the right to respect for his private and family life, his home and correspondence."

States Parties Must; (General)

- Respect → Don't do anything!
- Protect → Do something to protect me from human rights abuses!
- Fulfill → Facilitate, so I can enjoy my human rights!

States Parties Must; (Contextual)

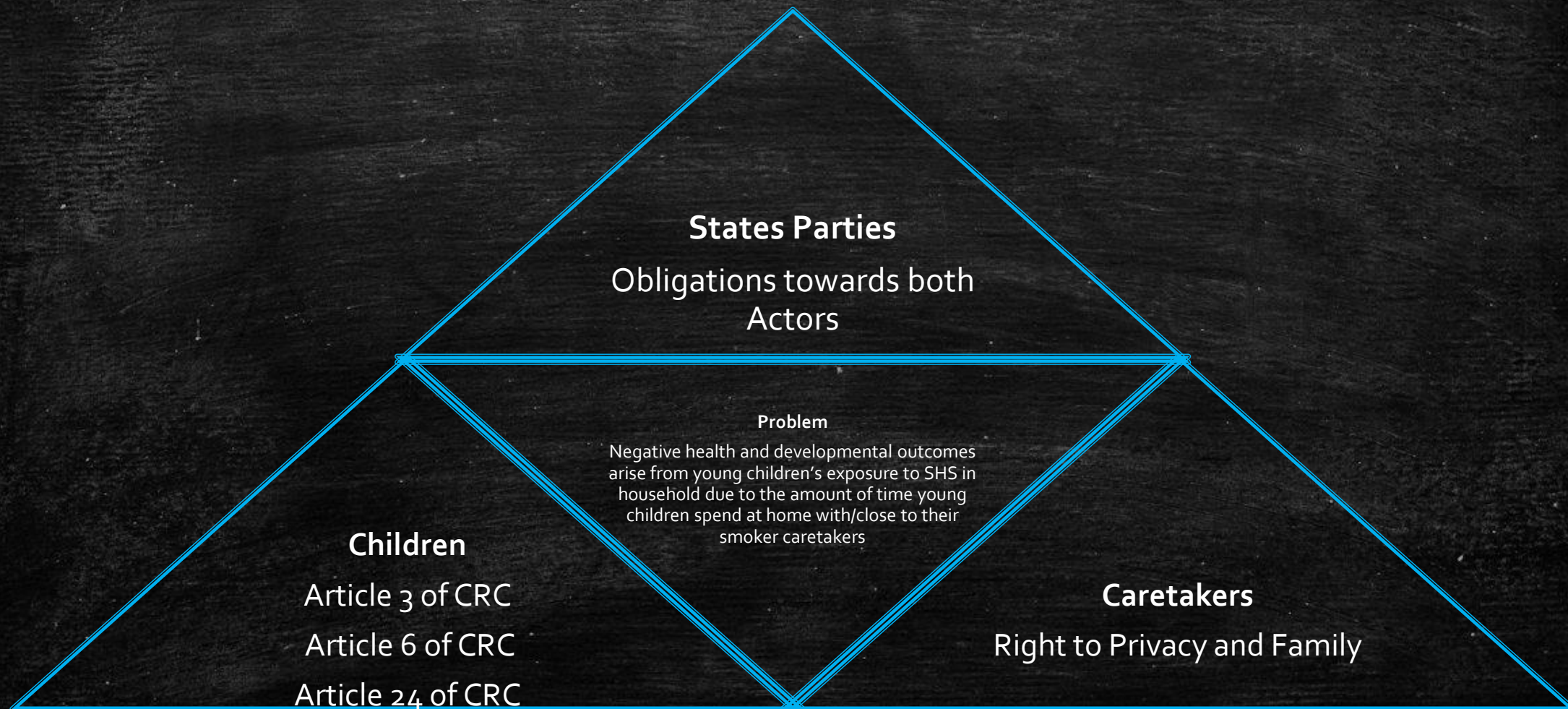
Towards Children

- Systematically apply best interest principle in their official actions.
- Ensure that all children enjoy the highest attainable standard of health.
- Consider smoke-free environment as a part of adequate housing.

Towards Caretakers

- Protect and respect everyone's right to privacy and family life.
- Adopt necessary legislative and administrative mechanisms in order to fulfil their obligations.

Triangular Relationship



Problem: Overlap of the Rights

Would regulation attempts concerning second-hand smoking in households create a conflict between children's rights and the privacy rights of caretakers?



The Balance: An Analogous Study

- Veganism
 - A lifestyle-related act of caretakers
 - No scientific consensus regarding negative health effects – unlike tobacco
- Higher Regional Court of Frankfurt, Germany
- Juvenile Court of Milan, Italy
- Outcome: lifestyle-related acts of caretakers, *a vital element of privacy rights*, can be limited in order to ensure children's rights, and they must safeguard children's best interests.

Conclusion

- Lifestyle-related acts of caretakers can be limited on the grounds of children rights.
- This limitation aligns with international law.
- The initial question remains unanswered.
- More administrative practice and further case law needed.



thank you!

esenwortmann@gmail.com