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Master's Thesis

Cancel Culture and the Freedom of Expression of Private Companies

Atmetimo kultūra ir privačių bendrovių saviraiškos laisvė

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Vilnius

2023

Abstract and Key Words

The research paper examines the nature of freedom of expression of private companies; Particular forms of exercising this fundamental right by the private companies and interconnection with the "Cancel Culture" consequences in terms of cancelling private individuals.

To specify, as much as "Cancel Culture" became actual practice in the modern world and most of the time it is connected to the actual legal consequences for "cancelled" private individuals, also, as much as big corporations and institutions might participate in the process and make some decisions regarding the unwelcomed persons, it is important to discuss whether private companies are entitled to make such decisions, on which bases and whether they can violate fundamental rights of the individuals.

In that regard, paper reviews the concept of private company; their fundamental rights; differences with the state institutions and interconnection with the competing interests of private individuals.

Paper discusses the topic based on theoretical sources and case studies.

Key Words: private companies; freedom of expression; freedom of expression of private companies; termination of contract; "Cancel Culture"; balance of competing interests.

Contents

Introduction

The concept of "Cancel Culture" is widely discussed recently as it gained prominence worldwide after 2018 when "Me Too" global movement started to fight against sexual harassment and assault by empowering survivors and victims of such crimes to speak against perpetrators. The "Cancel Culture" itself refers to the public calling out, boycotting, or shaming of individuals, often celebrities or public figures, for their controversial actions, statements, or beliefs. Generally, its not just a mere theoretical concept and has some actual consequences of removing people from job, projects, campaigns; boycotting certain products; damaging financial conditions, reputation or career of cancelled individuals and etc. Hence, above mentioned phenomenon became actual in terms of legal discussions as well.

From a legal perspective, it might raise concerns regarding defamation, freedom of expression or labour law issues and etc. On the one hand, Legal confusion and competing interests appear in light of the restrictions towards freedom of expression, moral or material damages that might be consequences of "cancel culture" experienced by a private individual. For instance, in the case of National Labor Relations Board v. Pier Sixty (2015) The Second Circuit Court of Appeals delivered a decision regarding the case when a private individual was fired from job because of the critical Facebook post. In that case one of the fundamental rights, freedom of expression might be at the centre of legal debates. Additionally, one of the infamous "Cancel Culture" cases, John Christopher Depp II v. News Group Newspapers Ltd. and Dan Wootton and d John C. Depp, II v. Amber Laura Heard concerned defamation claims and claimant`s legal demands related to the material damages, including, reputational damage.

But, from the perspective of the private companies, throughout the legal history, different legal systems have recognized the possibility of legal entities and corporations to enjoy several fundamental rights, including freedom of expression. Private companies, as entities

separate from the state, possess the right to express themselves and establish their values within the boundaries of the law. In the United States, most employment is considered "at-will," meaning that employers can generally hire or fire employees for any reason that is not illegal. Private companies often establish values and cultural norms that reflect their mission, vision, and brand and most of the times, company`s values and principles are as much connected to the financial income as business product they produce. Hence, research topic also relates to the interests and rights of the private companies and makes it important to discuss these competing interests of private individuals and legal entities.

From a perspective of legal entities, Private companies have the right to protect their reputation, maintain a positive work environment, and uphold their values, thus, when a public figure is "cancelled" because of the mentioned reasons, cooperation with that individual might be very unprofitable for a private company and its is important to discuss, whether legal entities are entitled to make such decisions, on which bases and circumstances and whether such decisions can be differentiated from the decisions made by state institutions.

Therefore, main topic of the paper will be private companies, their legal possibilities to hold and exercise freedom of expression and connection to the infamous "Cancel Culture" phenomenon. The research will discuss the concept of the "cancel culture" first; definition of private companies; difference between private companies and publicly traded companies, also from state institutions especially in terms of fundamental rights and freedoms and intersection of interests with private individuals.

Main aim of the research is to find out way to balance competing interests of the private individuals on the one hand and legal entities, on the other. Also, to decide the dilemma and differentiate responsibilities hold by corporations and state institutions.

Fundamental questions during the research will be to determine the concept of private companies first, to find out in what respect fundamental rights (and specifically freedom of expression) are enjoyable for private companies and whether private company is legally

entitled to “participate” in the “cancelling” private individuals and terminate working relationships with them when individuals are called out by the public for certain reasons.

Several core judgements and legal cases will be discussed and analysed while defining the right of private companies to enjoy freedom of expression; right of corporations to establish their values and fire employees when their opinions or actions contradicts with the company`s values; evaluating of the famous “cancel culture” cases and private individuals had to experience because of allegations and private companies` responses to such allegations.

Regarding the methods of the research, historical, theoretical, critical analysis, grammatical, literary, case study and practical research methods will be used mostly while analysing the aforementioned topic.

The research is divided into several paragraphs and subparagraphs in order to make structure and the essence of paper more understandable and obvious.

Chapter I. A brief Overview of "Cancel Culture".

The concept of "cancel culture" is widely discussed today both in terms of its normative and legal aspects. As it is defined in the literature, it is a phenomenon when certain private individuals or even legal entities which have transgressed certain norms are called out , removed from their work and widely condemned by the members of the public. This process is mainly conducted via social media or online platforms (Saint-Louis, 2021, p. 2). According to the another definition, aforementioned term is often used by social media or famous worldwide publications to describe and demonstrate the process developed after the dissatisfaction expressed by the consumer towards certain brand, organization or individual.

The colloquialism of "cancelling" emerged in social media quite early in 2010 and it was related to the music lyrics referring to cancelling people. In 2014, one of the American basic cable television network`s, VH1`s famous tv show Love & Hip Hop New York had cats members "cancelling" each other, specifically, one of them used phrase "you are cancelled " towards another, that leaded to the quick and brief moment on of #cancelling on X (formally Twitter). But, based on the statistics of Google Trends, the concept of "cancel culture" wasn`t frequently searched until the end of 2018. Some practitioners have been claiming that the cancel culture as a social or wide stream concept emerged after the "Me Too" global, social movement that aimed to fight against sexual harassment and assault by empowering survivors and victims of such crimes to speak against perpetrators. The movement gained public attention in 2017, when many celebrities and well known people were accused of sexual misconduct when lots of women shared their stories online using the famous hashtag #MeToo (Zafari, 2023, p.1). The Me Too movements itself has caused several legal or social consequences, including : Increased reporting and investigation of sexual harassment and assault cases by authorities, media outlets, employers, organizations,

and institutions; Increased public scrutiny and criticism of celebrities and public figures who have been accused or convicted of sexual misconduct; Increased legal actions and settlements against perpetrators who have been sued or charged with sexual crimes; Increased social movements and campaigns that advocate for more rights and protections for survivors of sexual violence; etc (Tippett, 2018, p.5).

According to the some authors, The connection between the Me Too movement and cancel culture is complex. On one hand, cancel culture can be seen as a positive aspect of the Me Too movement, as it allows marginalized people to seek accountability where the justice system fails. The #MeToo movement gave innumerable women (and some men) the ability to call out and maybe cancel their countless abusers in a forum where the accusations might be heard and matter. Cancel culture can also be seen as a form of resistance against oppression and discrimination that has been normalized or ignored for too long (Christin, 2020, p.3).

On the other hand, cancel culture can also be seen as a negative aspect of the Me Too movement, as it can lead to social ostracism or censorship. Cancel culture can also be seen as a form of mob justice that lacks due process or evidence. (Vogel et al., 2021; Haidt, 2021; Kohn, 2021., p.1-17). Cancel culture can also create a toxic environment where people are afraid to speak up or challenge each other's views. Cancel culture can also undermine the credibility or reputation of survivors who may face false accusations or backlash from their own communities.

From the practical point of view, generally, as it was already mentioned previously, begins via social media, when an individual or group of people shares posts regarding the target`s misconduct, wrong behaviour, alleged crime, abuse, offensive behaviour or other forms of wrongdoing which are deemed as a reason to punish the person. Cancellation reason, as mentioned above, might be several kind of bad behaviours done by individuals or humiliating/ discriminative/ other kind of unacceptable opinions expressed which might be found in the recent past or coming from the target`s present social media/other activities.

As described in the literature, cancel culture has a characteristic of a group activity cause generally, cancelling a person is done in a group, when group of people find specific action of a person offensive, illegal, unethical, against the certain norm. it might be started with one person, but for the effectiveness it needs to gain attention via social media that will end up in support of that one person (Kurniawan et al., n.d., p.2). For instance, as it is widely recognized, the phenomenon of "Me Too" started by Tarana Burke in 2005 but the movement raised its popularity mostly after 2017 when the accusations were made via social media against Harvey Weinstein being alleged of sexual harassment. The Me Too movement was founded in 2006 by Tarana Burke to support survivors of sexual violence, particularly young women of colour from low-wealth communities, to find pathways to healing . However, it was the allegations against Harvey Weinstein that brought the movement to the forefront of public attention. The first person to go against Weinstein was the American actress Ashley Judd, who accused him of sexual harassment in a New York Times article published on October 5, 2017. The article detailed decades of allegations of sexual harassment against Weinstein, and actresses Rose McGowan and Ashley Judd were among the women who came forward. The allegations against Weinstein sparked a global explosion of the #MeToo hashtag, originally coined by activist Tarana Burke, with survivors sharing personal stories. The movement is still ongoing, and its legacy has broadened to encompass issues related to gender equity in the workplace and legal reforms to eliminate barriers that had prohibited victims from coming forward ("Weinstein Rape Sentence in US Boosts #MeToo Movement", HRW.org).

"Cancel culture" as a phenomenon raises a lot of questions and debates in the public. Based on the Breakey, some of the authors argue that there are fundamental principles that must be understood about democracy or freedom of argument. The first principle is that public discussion in a democratic country is a source of legitimacy for an argument to be accepted or not. In public discussions, different views are listened to inclusively and then a collective decision is taken. The author believes that when these differences are suppressed and silenced, the state loses its legitimacy. In other words, the author suggests that the legitimacy of a democratic state is based on the ability of its citizens to engage in open and

inclusive discussions, and that the suppression of dissenting voices undermines this legitimacy ((Kurniawan et al., n.d. p.2).

It is widely considered in the literature that there are several fundamental principles that must be understood about democracy or freedom of argument. One of these principles is that public discussion in a democratic country is a source of legitimacy for an argument to be accepted or not. In public discussions, different views are listened to inclusively and then a collective decision is taken. It is believed that when these differences are suppressed and silenced, the state loses its legitimacy. In other words, the legitimacy of a democratic state is based on the ability of its citizens to engage in open and inclusive discussions, and that the suppression of dissenting voices undermines this legitimacy. Some authors also contend that the ability to listen to different opinions, without "turning off" other dialogue subjects, will enrich the perspective of the group. They believe that "humiliating" the other party through cancel culture can certainly be a "boomerang" for the group itself. Some authors then question the quality of democracy built upon the presuppositions of cancel culture. In other words, they argue that the ability to listen to different opinions is essential for enriching the perspective of the group, and that cancel culture can be counterproductive and undermine the quality of democracy (Kurniawan et al., n.d. p.2).

As I have mentioned earlier, cancel culture can be identified as an act of online shaming mostly. But in practice, cancel culture can also raise several legal issues. For instance, it might raise concerns regarding defamation, freedom of expression or labour law issues and etc.

Defamation is a legal term that refers to the act of making false statements about someone that harm their reputation. In the context of cancel culture, individuals or organizations that are targeted may claim that they have been defamed by the accusations made against them. This can lead to legal action being taken against those who made the accusations.

Labor law issues can also arise in the context of cancel culture. For example, if an employee is fired or otherwise punished by their employer as a result of being targeted by cancel culture, they may have legal recourse under labour laws. Similarly, if an employee is

targeted by cancel culture for their views or actions outside of work, their employer may face legal issues related to discrimination or harassment.

Finally, cancel culture can raise concerns related to freedom of expression. Some argue that cancel culture stifles free speech by creating a climate of fear in which people are afraid to express their opinions for fear of being targeted. Others argue that cancel culture is a necessary tool for holding people accountable for their actions and that it does not infringe on freedom of expression.

It is important to note that the legal issues related to cancel culture are complex and can vary depending on the specific circumstances of each case (Vogel et al., 2021; Haidt, 2021; Kohn, 2021., p.4).

Cancel culture and freedom of expression of private companies are two complex and interrelated topics. While individuals have the right to express their opinions, private companies also have the right to express their values and choose not to associate with individuals who do not align with those values. This can lead to legal issues related to labor law, discrimination, and harassment.

In the context of cancel culture, private companies may face pressure to take action against individuals who have been publicly called out for their controversial or objectionable views or actions. For example, if a company like Netflix is made aware that one of its actors has been accused of sexual violence, it may choose to sever ties with that individual in order to distance itself from the controversy and protect its reputation. However, this can raise concerns related to labor law, as firing a talented individual may be a violation of legal regulations.

On the other hand, private companies also have the right to create a safe and inclusive work environment for their employees. If an individual has been accused of sexist or racist behavior, or has committed sexual violence, their employer may face legal issues related to discrimination or harassment if they choose to continue employing that individual. In this case, the company's freedom of expression is aligned with its values of creating a safe and inclusive work environment.

Cancel culture has been the topic of debates regarding the moral issues as well, with some arguing that it is a necessary tool for holding people accountable, while others consider that it stifles free speech and can lead to negative consequences for those who are targeted. From a moral perspective, cancel culture raises concerns related to freedom of expression, censorship, and mob mentality.

Some argue that cancel culture is a form of censorship that stifles free speech and creates a climate of fear in which people are afraid to express their opinions for fear of being targeted. This can lead to a chilling effect on free speech and can limit the diversity of ideas and opinions that are expressed in public discourse.

Others think that cancel culture is a necessary tool for holding people accountable for their actions and that it does not infringe on freedom of expression. They consider that individuals who engage in harmful or objectionable behaviour should be held accountable for their actions and that cancel culture is a way of doing so.

However, cancel culture can also lead to a mob mentality in which individuals are targeted and harassed by large groups of people. This can lead to negative consequences for those who are targeted, including loss of employment, social isolation, and even threats of violence.

In terms of the “big brother watching us” society, cancel culture can raise concerns related to privacy and surveillance. Cancel culture often involves the public shaming of individuals who have been accused of controversial or objectionable behaviour, which can lead to a loss of privacy and a feeling of being constantly watched and judged.

Overall, the moral concerns related to cancel culture are complex and multifaceted. While it can be a powerful tool for holding people accountable, it can also lead to negative consequences for those who are targeted and can raise concerns related to freedom of expression, censorship, and mob mentality (Breakey, "The Ethics of Cancel Culture", Enlighten).

Chapter II. Freedom of Expression and "Cancel Culture"

The concept of Freedom of Expression

International standards based in the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR).

First of all, it needs to be mentioned that international and regional standards of freedom of speech varies. International standards were gradually established by the universal declaration of Human rights (UDHR) and the international Covenant on Civil and Political Rights (ICCPR) and their implication.

The Universal declaration of Human rights emphasizes the importance of freedom of speech already in the preamble, while undermining that the oppression of people and their rights which the world had witnessed throughout the history, could be outweighed by the new world thriving for the freedom of ideas and expression, preamble practically highlights the diversity which is brought by the freedom of expression. Article 18 of The universal declaration of Human rights undermines not only freedom of religion, but also freedom of thought and conscience, either alone or in community with others, in public or private, whereas article 19 guarantees, that everyone has the freedom of opinion and expression, including freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers (UN General Assembly, 1948). As the declaration's main aim was to generally outline the rights and freedoms, it does not provide explicit list for the grounds on which those rights including freedom of speech can be restricted, In the last article (Art.30) however, declaration refers to the interpretation of its provisions by the state, group or person and states that none of this provisions could be interpreted in a way to aim the destruction of these rights and freedoms. Hence, provision regarding freedom of expression could be interpreted only in harmony with the other rights and freedoms listed in the declaration. While UDHR at first

held mostly declaratory nature, today it is considered as the part of international customary law, therefore these provisions hold significant importance.

International covenant on civil and political rights in Article 19 also guarantees the right to hold opinions without interference, freedom of expression that includes freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of choice. The covenant also provides the grounds of restrictions of the freedom of expression whereas it emphasizes that exercising it carries its special duties and responsibilities, the limitations of it's exercise should be lawful and necessary for respecting of the rights or reputations of others or for the protection of national security or of public order, or of public health or morals (United Nations, 1966). he interpretation of the letter ground based on the protection of the "public moral" is slightly debatable – precisely what can be considered as the part of "Public Moral" important enough to limit the freedom expression? Can this concept also include the perception of a human being as someone who should not be labeled for the rest of his or her life by the private companies? In short, can the cancel culture be considered as "immoral".

Obviously, the implementations of those documents vary by countries and regions, however considering the remarkable importance they are carrying, they are worth to be taken into account.

Some regional and national standards of Freedom of Expression

Clearly, there are some very influential regional and national instruments while interpreting the concept of freedom of expression and protecting it, setting important standards. European Convention on Human Rights and it's interpretation by the European court of Human rights practically shaped the European vision and approach towards freedom of expression. Whereas it is also important to analyze some American standards established by the US supreme court considering that the origins from where the cancel

culture very much derives, the huge impact of US industry and culture on mainstream and one of the highest standards while protecting freedom of speech.

ECHR standard

Article 10 of European Convection on human rights guarantees everyone's right to the Freedom of expression, including freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. Stating This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises, Convention provides the grounds of limitations of exercising this right that is accompanied by its duties and responsibilities. This right according to the provision, some formalities, conditions, restrictions or penalties may apply when they are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, the prevention of disorder or crime, the protection of health or morals, the protection of the reputation or rights of others, preventing the disclosure of information received in confidence, or maintaining the authority and impartiality of the judiciary (Council of Europe, 1950).

Even though this provision clearly sets protection of Morals as one of the grounds of restriction of freedom of expression, from the very early case law of the European court of Human rights, the court certainly provided the explicit interpretation towards this matter, stating that the freedom of expression also protects not only it ""information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference", but also the ideas or opinions that might be offensive, shocking or disturbing for the state or ay sector of Population (ECHR, Handyside v. United Kingdom, 1976., par. 49). However, in this certain case the court acknowledged the country's power of appreciation on that specific occasion when applying restrictions or penalties for the protection of morals which made them necessary for democratic society (ECHR, Handyside v. United Kingdom, 1976., par. 49).

Later the European Court of Human Rights expand the abovementioned interpretation, stating that protecting ideas that are not favoured by the public is the demand “of that pluralism, tolerance and broadmindedness without which there is no "democratic society” (ECHR, Lingens v. Austria, 1986., par.41). While protecting the freedom of the press the court stated that not only press but also receivers of the information have the freedom of debate, forming controversial ideas, and shaping information (ECHR, Lingens v. Austria, 1986., par.42). therefore the public figures should carry the higher tolerance regarding the freedom of press that is crucial in democratic society (ECHR, Lingens v. Austria, 1986., par.42). Later ECHR once again highlighted the importance of freedom of press and cruciality of non-interference by the state especially in the cases regarding Journalistic investigations (ECHR, Cumhuriyet v. Turkey, 2016).

ECHR established another standard while stating that journalists must not be accountable for the interviews carried with the individuals who are infamous for their racist views, If those interviews do not encourage violence or hatred, but rather aim to “expose, analyze and explain this particular group of youth” who are holding controversial opinions (ECHR, Jersild v. Denmark, 1994). Though Criticism as the form of expression has it’s permitted limits, beyond which freedom of exression does not fall under the protection of the convention, such as the public statement that Muhammad was a pedophile, convicting a person for the abovementioned public statement did not establish the violation of the convention (ECHR, E.S. v. Austria).

ECHR gradually expanded its standards towards the criticism of Public officials who should bear more tolerance and always use less strict measures even against unlawful criticism. (ECHR, Ceylan v. Turkey, 1999). Later ECHR also expanded the scope of tolerance regarding the criticism of cooperation by individuals, that might also include offending or defaming speech (ECHR, Steel and Morris v. United Kingdom, 2005). ECHR also set standards regarding web pages, stating that the owners of it can be responsible for the content that was made users (ECHR, Grand Chamber, Delfi AS v. Estonia, 2015).

European court of Human rights with its case law like M'bala M'Bala v. France (ECHR, Decision M'Bala M'Bala against France, 2015), Vejdeland and Others v. Sweden (ECHR, Vejdeland and Others v. Sweden, 2012), Perinçek v. Switzerland, Sousha Goucha v.Portugal, had gradually shaped the line on which the cases should be evaluated when freedom of expression comes into contradiction with non-discrimination – outlining the certain threshold of hatred and incitement that should be met in order to limit freedom of expression. However, some might consider its approach as inconsistent considering the judgements on cases of M'bala M'bala V. France and Perinc□ek v. Switzerland. While in the first case ECHR set the clear standard that supporting holocaust denial expressing antisemitic opinions does not fall under the protection of freedom of expression and conviction of the person by the state on the abovementioned grounds does not breach the convention, Therefore the complaint was considered inadmissible (ECHR, Decision M'Bala M'Bala against France, 2015). Though in Perinçek case, the court didn't consider that denial of Armenian genocide met the threshold of hatred and incitement that could provide the ground for criminalization (ECHR, Grand Chamber, Perinçek v. Switzerland, 2015). Therefore at certain level Freedom of Expression expands at certain level including the cases and situations when the thoughts, views and opinions expressed were not quietly liberal, pro-democratic, open-minded, favorable for the society.

European court had stated that handing out the leaflets that include homophobic views to the students and pupils does not fall under the protection of freedom of expression, conviction of people for that reasons does not violate the convention by the state. It is worth to mention that in certain case ECHR took into account particular American approach, citing the US supreme court that held that "the undoubted freedom to advocate unpopular and controversial views in schools and classrooms must be balanced against the society's countervailing interest in teaching students the boundaries of socially appropriate behavior" (ECHR, Vejdeland and Others v. Sweden, 2012).

European Court on human rights established that protection of Freedman of expression reached the grounds of undesirable statements, speech, jokes and etc., including jokes that

for the first sight might be seemed as homophobic, like referring gay men as women at the live comedy show (ECHR, Sousa Goucha v. Portugal, 2016).

American Standard

It is interesting how the supreme court United States steadily shaped the standard different for the protection of freedom of expression that should clearly be considered as broader and higher compared to the scopes of the right structured by the European court of Human rights.

US supreme court had defined wide framework for freedom of expression in the areas of politics that is undoubtedly one of the huge aspects the right. Like ECHR US supreme court had stated that public figures should have higher tolerance for the criticism, however unlike the European court US supreme court also explained explicitly that the mere fact of defamation was not enough to establish the responsibility of media, In fact the clear presence of "actual malice" was also necessary (New York Times Co. v. Sullivan, 1964). From the very early case law, Court already established that press should have the right to give priorities to some political candidates and they should not be obligated to create the same kind of space for all of them (Miami Herald Publishing Co. v. Tornillo, 1974). Court broadened the scope even more almost the decade later regarding political campaigns. US supreme court granted the same rights to the freedom of expression and political speech to the corporations and unions; therefore, they couldn't be restricted while putting the desirable efforts and financial resources in their campaigns (Citizens United v. FEC, 2010).

Another depiction of US supreme court wide interpretation of the concept of freedom of speech is its broad case law about offending or distressing speech, and the situations when thoughts opinions, ideas and even the ways of expression are way far from acceptable and reasonable in the society. Founding the "imminent lawless action" test, from an early case law, that practically broadened the scope of the right's implication, the court stated that the concept of freedom of expression went beyond acceptable speech and even reached the areas where the ideas presented were inciting, when they encouraged violence, illegal

activities, but did not give impetus to the illegal "imminent action" (Brandenburg v. Ohio, 1969).

The American concept of the freedom of expression went beyond "the speech" and it also included some behavior, conduct or action while they could be considered as expressive statements, perfect example is the action of burning a flag that as supreme court determined, is a form of symbolic speech fallen under the protection of the right (Texas v. Johnson, 1989), even that it is quite offending and unacceptable.

Discussing the subject from some international and regional standards, and comparing them to the American interpretation of the right, there is a big difference in terms of the limits, especially when they are resulted by the necessity to protect "Public Moral". Speech which is protected under the American concept might also refer to and provoke the most sentimental and intimate feelings in the manner which can be objectively considered as extremely unethical – for example, organizing anti-gay protests at funerals (Snyder v. Phelps, 2011). Funerals are the spaces for the most delicate feelings of individuals, from the moral point of view society is compelled to have reasonable amount of respect to someone else's grief, the church that holds protests at military funerals from this point of view totally denies the above-mentioned moral obligation, not to mention the pro-discriminatory message of their protests, Yet, by the ruling of US supreme court this is also protected by the free speech.

US supreme court also established the same higher lever of protection of free speech regarding online platforms. First, by declaring that some indecent material should be still protected as the free speech (Reno v. ACLU, 1997), then providing the right to the registered sex offenders to use social media without any ban (Packingham v. North Carolina, 2017).

Cancel Culture: Censorship or a form of Expression?

In recent years, the phenomenon known as "cancel culture" has gained significant attention and sparked heated debates. As it was already defined, “cancel culture” refers to the public calling out, boycotting, or shaming of individuals, often celebrities or public figures, for their controversial actions, statements, or beliefs. While some argue that cancel culture is an important tool for holding people accountable, others claim that it suppresses free speech and fosters a culture of censorship (Alvarez Trigo, 2020., p.1) On the other hand, question arises whether cancelling individuals for the bare fact of expressing opinion should be considered as a form of modern “censorship” or not. If we define the mentioned concept, Censorship refers to the suppression, control, or regulation of information, ideas, or artistic expression by an authority or governing body. It aims to restrict certain content from reaching the public, often for political, moral, or ideological reasons (Horowitz, "The First Amendment, Censorship, and Private Companies", Carnegie Library).

Proponents of cancel culture argue that it serves as a means of expressing collective outrage and holding individuals accountable for their behavior. They claim that canceling someone is not censorship but rather a form of social consequence. In their view, calling out inappropriate or harmful actions serves as a powerful tool to challenge systemic inequalities and promote social justice. Cancel culture, they argue, gives a voice to marginalized communities who have historically been silenced and ignored (Velasco, 2020., p.1). Throughout history, censorship has taken various forms and existed in different societies. Its origins can be traced back to ancient times, where rulers and religious institutions sought to control information dissemination. Different forms of censorship were also actively used during the 20th century by Soviet or Nazi governments and is still being used in some totalitarian regimes (De Baets, 2010., p.69).

During the Soviet era, censorship was a central tool of state control over information and artistic expression. The government implemented strict censorship policies through organizations like Glavlit, which monitored and censored books, newspapers, films, and other media. The primary objective was to maintain the dominance of communist ideology and prevent the spread of ideas deemed contrary to the state's interests (Zaslavsky, 2022., p. 292). From a legal perspective, In the Soviet Union, censorship was codified through

laws and regulations that restricted freedom of expression. The Criminal Code of the RSFSR (Russian Soviet Federative Socialist Republic) and other Soviet republics contained provisions criminalizing "anti-Soviet propaganda" and "dissemination of false information." These broadly defined offenses encompassed any expression deemed critical of the government or contradictory to communist ideology. Such Anti-Soviet propaganda and agitations was deemed as criminal offence in USSR and was punishable under the criminal code (Feldbrugge et al., 1985., p.627).

Similarly, in Nazi Germany, censorship was implemented through legal mechanisms aimed at suppressing dissent and promoting Nazi ideology. The Reich Press Law of 1933 established state control over the press, allowing the government to ban publications, revoke licenses, and impose heavy fines on publishers critical of the Nazi regime. The Nazis also enforced censorship through the Reich Chamber of Culture, which controlled artistic expression. Artists, writers, and musicians were required to join the appropriate professional chambers and conform to the standards set by the regime. Works that deviated from Nazi ideology or depicted "degenerate" art were banned, leading to the persecution of many artists and intellectuals (Adam, 1992., p. 121-122).

These legal mechanisms and punishments aimed to suppress opposition, control information flow, and shape public opinion in line with the ideologies of the ruling regimes. The fear of legal repercussions and the pervasiveness of censorship created an atmosphere of self-censorship, where individuals refrained from expressing their true opinions and ideas to avoid persecution.

Censorship and legal punishments for expression of opinions and ideas still exist in various forms in certain countries today (Bennet & Naim, "21st-century censorship", Columbia Journalism Review). For instance, The North Korean regime maintains strict control over information and expression. The country's legal system includes laws that restrict freedom of speech, press, and assembly. The state controls all media outlets, and any form of dissent or criticism of the government is severely punished. Expressing opinions or consuming information deemed critical of the regime can result in imprisonment, forced labour, or

even execution (North Korea: Frontiers of Censorship, 2011., p.1). In recent years, Russia has faced criticism for its restrictions on freedom of expression. The government has implemented laws that enable censorship and punish dissenting voices. For example, the "Foreign Agents Law" requires NGOs and media organizations to register as "foreign agents" if they receive foreign funding and engage in political activities. This label carries negative connotations and can limit their activities. Additionally, the "Extremism Law" has been used to target individuals expressing dissenting opinions, leading to arrests and prosecutions (European Parliament resolution of 19 December 2019, 2019).

Hence, critics argue that cancel culture has a chilling effect on free speech and stifles open dialogue. They contend that the fear of being canceled can lead to self-censorship, where individuals refrain from expressing their opinions or engaging in controversial discussions. They argue that cancel culture does not encourage dialogue or allow room for growth and education. Instead, it creates an environment of fear and intolerance, where even minor missteps can result in severe consequences (Fahey et al., 2021., p.4).

Furthermore, critics argue that cancel culture often lacks due process and can be driven by mob mentality. They express concerns about the potential for false accusations or misunderstandings leading to the unjust cancellation of individuals. Some argue that the swift judgment and public shaming associated with cancel culture do not allow for nuanced discussions or the opportunity for redemption and personal growth (Infante & Cruz, n.d. p.4).

In evaluating cancel culture, it is important to consider the broader societal context. The rise of social media has undoubtedly amplified cancel culture. The ease and speed with which information spreads make it possible for controversies to go viral overnight. However, this also means that mistakes or misjudgments can have far-reaching and long-lasting consequences (Sniderman & Theriault, 2004., p.134).

Some people might consider that "Cancel Culture" resembles aforementioned examples, when people have been punished because of the expression of their ideas or opinions, but I think it is important to recognize and see one of the main differences between "cancel

culture" and state level censorship. One the one hand, in terms of cancelling people, such decisions are mostly made by group of private individuals and companies when censorship is more related to the state policy and state institutions. Main point of my research is to emphasize the main difference between state institutions and private individuals/or organizations regarding their burden, responsibilities or rights to terminate employment relationship with a person on the one hand and to punish a person on the other hand. Hence, I would not qualify practice of cancelling people with legally punishing people because of the expression of ideas or opinions and I will explain my position in details in below paragraphs.

In conclusion, the debate surrounding cancel culture remains complex and multifaceted. While supporters argue that it is a necessary tool for holding individuals accountable and challenging systemic inequalities, critics express concerns about its impact on free speech and the potential for unjust consequences. Ultimately, finding a balance between accountability and fostering a culture of open dialogue is crucial. It is essential to encourage constructive conversations, allow room for growth and education, and ensure that the principles of justice and fairness guide our actions, both online and offline.

Chapter IV. Freedom of Expression of Private Companies

Concept of a Private Company

for the purposes of the research, it is important to distinguish private companies and public institutions as much as they are different in many regards and especially, they are different in light of the rights and responsibilities. In terms of "cancel culture" we should differentiate what kind of responsibilities should be imposed in order to decide whether certain decision to "cancel" a person for their expressed opinion or because of allegations toward that person should be considered as act of censorship and violation of fundamental

rights and freedoms of a person, or justified decision under private company`s freedom of expression.

As one of the most powerful establishments of contemporary society, organizations has a significant impact on our lives. We derive a substantial portion of our cultural, social, and material gratifications from different organizations or companies (Bedeian & Zammuto, 1991). Over the years, more and more focus has been given to exploring the resemblances and disparities between public and private establishments, and there is a rising collection of written works on the subject (Perry & Rainey, 1988., p.183). Numerous academics have verified that public and private establishments vary in some evident manners (Rainey, 2009).

The resemblances and disparities of both establishments have been sketched and scrutinized based on certain fundamental concepts of establishment that include objectives, commodities and services, resource possession, establishment structure and design, guidance and management, decision-making, and establishment culture. The rationale for applying these concepts and excluding others is that these concepts are crucial to the establishment analysis and have greater applicability over other concepts in order to understand the features of public or private establishments in a methodical manner (Khandaker, 2016., p. 2874).
According to the United Kingdom`s Company`s ACT 2006 private company is defined as any company which is not considered as public company (Companies Act 2006, c. 46., p.4), And according to the same article, "public company" is also defined as which is limited by shares or which is limited by guarantee and having a share capital whose incorporation certificate states that it is public company; or regarding to which the requirements of this Act, or the former Companies Acts, as to registration or re-registration as a public company have been complied with on or after the relevant date (Companies Act 2006, c. 46., p.4). Based on the aforementioned British Company Law the key distinctive factor between private and public company is the capacity to offer securities to the public (Hannigan, 2012).

Dutch company law does not provide a formal definition of the distinction between public and private companies (NV and BV, respectively). A company can be incorporated as either a public or a private company, and each company type has separate provisions that may overlap or diverge. The transferability of shares in a private company is restricted by default, but the articles of association can provide for other restrictions or enable complete transferability of shares, similar to a public company (Dutch Civil Code, 195(1)., ar.2). Under Dutch law, it is possible in theory for a private company to be publicly traded. The issue of whether company law should give importance to the difference between listed and unlisted companies, in addition to, or instead of, the distinction between public and private companies is a matter of debate.

Hence, the concept of private companies is a fundamental aspect of company law across the world. Private companies are typically characterized by their limited liability, restricted transferability of shares, and a maximum number of shareholders. Private companies are also subject to less stringent regulatory requirements than public companies. The Companies Act 2013 in India, for example, defines private companies as those whose articles of association restrict the transferability of shares and prevent the public at large from subscribing to them.

Some of the key features of private companies include Limited liability: Shareholders are only liable for the amount of money they have invested in the company; Restricted transferability of shares: Shares cannot be freely traded on the stock exchange; Maximum number of shareholders: Private companies are typically limited to a maximum of 50 shareholders (de Jong, n.d. p.3).

A private company is typically owned by a small number of shareholders, company members, or a non-governmental organization. It does not offer its stocks for sale to the general public, but instead, its stock is privately offered, owned, or exchanged among a small number of shareholders - or even held by a single individual. Depending on the country they are incorporated in and how they are structured, private companies are also referred to as privately held companies, limited companies, limited liability companies, or

private corporations (CFI team, "What is a Private Company?", Corporate Finance Institute). Generally private companies can be divided into several types of companies, the mostly acknowledged types are: family-owned businesses, sole proprietorships, partnerships, and small to medium-sized enterprises (SME). As much as this kind of companies doesn`t have access to the public exchange market, as mentioned above, the only way they can raise funds is via private investment, company profits, or loans from lenders (CFI team, "What is a Private Company?", Corporate Finance Institute).

A Private Company and A Publicly Traded Company

Private companies and publicly traded companies are distinct entities in the business world, each with its own set of characteristics and legal framework. However, despite their technical differences, these entities share similarities when it comes to fundamental rights and freedoms. As it was already discussed, Private companies are typically owned and controlled by a limited number of individuals, families, or a group of investors. They are not obligated to disclose their financial information or other proprietary details to the public. Private companies have greater flexibility in decision-making since they are not subject to the same level of scrutiny and regulations as publicly traded companies. They have the autonomy to set their own goals, values, and corporate culture. Private companies, as non-state actors, have limited positive obligations regarding human rights compared to state institutions. While they are expected to comply with local laws and regulations, private companies are generally not legally required to actively promote or protect human rights beyond the scope of their legal obligations. However, societal expectations and stakeholder pressures may drive private companies to adopt responsible business practices that align with human rights principles (Lahr, 2015., p.26).

Publicly traded companies, also known as publicly listed companies, are entities whose shares are available for public trading on stock exchanges. These companies have numerous shareholders and are subject to various regulatory requirements, including financial

reporting and disclosure obligations. Publicly traded companies often have a more complex corporate governance structure due to the diverse ownership base. Similar to private companies, publicly traded companies enjoy fundamental rights and freedoms. These rights may include freedom of expression, freedom of association, and property rights. Publicly traded companies have the ability to convey their perspectives, values, and opinions through various channels, including public statements, corporate social responsibility initiatives, and engagement with shareholders.

Publicly traded companies, like private companies, have limited positive obligations regarding human rights. While they must comply with applicable laws and regulations, they are not typically mandated to take proactive measures to protect or promote human rights beyond legal requirements. However, due to the increased visibility and accountability associated with being publicly traded, these companies often face greater scrutiny from stakeholders, including shareholders, customers, and advocacy groups, which can drive them to adopt ethical practices and consider broader societal concerns (Lahr, 2015., p.26). Hence, they share similarities when it comes to exercising fundamental rights and freedoms. Both types of companies have the right to freedom of expression, allowing them to express their opinions, values, and perspectives within the boundaries of the law. They also have the freedom to associate with individuals, organizations, or causes that align with their interests and goals. Moreover, private and publicly traded companies have property rights, enabling them to own and control assets and intellectual property.

Freedom of Expression of Private Companies

USA standard

Regarding the private companies, one of the most important issues, especially for the purpose of this research is correlation between a private company and fundamental rights. To start with the historical perspective, when the Constitution of the United States and Bill

of Rights were adopted in the 18th century, there were very small numbers of incorporated businesses hence, the instruments of fundamental rights and freedoms were not drafted in a way that would include companies as well. Some of the fundamental rights guaranteed under the USA constitution were applicable for the corporations as well but the agreed position was that were was no unified theory regarding the extent of the constitutional protection of corporations (Miller, 2011).

According to the modern approach, some of the fundamental rights are considered as applicable for corporations too but not all of the fundamental rights and freedoms (Oliver, 2015., p. 676).

In the United States, the legal framework surrounding the freedom of expression for legal entities, such as corporations, is a complex and evolving area of law. It involves the intersection of constitutional rights, statutory law, and judicial interpretation. Here's an overview of the theory and practice regarding the right of freedom of expression for legal entities in the USA. As mentioned earlier, The First Amendment to the United States Constitution protects the freedom of speech, which has been interpreted by the courts to apply to both individuals and certain legal entities. However, the extent of constitutional protection afforded to corporations' freedom of expression has been the subject of debate and legal interpretation (Epstein & Jacobi, 2011).

From the corporate law perspective, there is also a concept of "corporate personhood", which recognizes that corporations are legal entities with certain rights and protections under the law. While corporations are not individuals, they are recognized as having some legal rights, including limited constitutional rights (Lamoreaux & Novak, n.d. p.3). While corporations have the right to express their values and principles, the extent to which they can do so may vary. Courts have recognized that corporations have interests beyond maximizing profits and that they may engage in activities that promote social or environmental goals. However, these actions must still align with the corporation's primary purpose and responsibilities to its shareholders (Stout, n.d.; Greenfield, 2011).

Additionally, The Supreme Court has held that corporations, like individuals, have the right to engage in political speech. In the landmark case of Citizens United v. Federal Election Commission (2010), the Court ruled that restrictions on independent political expenditures by corporations violated the First Amendment. This decision opened the door for increased corporate involvement in political campaigns.

In some instances, the concept of freedom of expression for legal entities intersects with employment law. For example, employee speech that is tied to the corporate values or principles of an organization may be protected under labour laws, such as the National Labor Relations Act. However, the scope of such protections can vary depending on the specific circumstances and the impact on the employer's legitimate business interests (Bennett-Alexander & Hartman, n.d.; Rassas, n.d.; Rothstein et al., n.d.; Karlan et al., n.d.; Segal, 2018; Rothstein, 1984; Estreicher, 1991; Hunter, 2004., p.15).

ECHR standard

From the European perspective, regarding the private companies and their fundamental rights, ECHR convention should be considered as the most important legal document. ECHR is influential document for the EU regulatory perspective as well, as Court of Justice has repeatedly stated ECH has very special significance for EU law. The EU has recognized the ECHR as a source of fundamental rights in the form of general principles, even after the entry into force of the Charter of Fundamental Rights as a binding legal act in 2009. The Treaty of Lisbon also provided for a duty of the EU to accede to the ECHR. The influence of the ECHR on EU law is mentioned in the preamble of the Charter of Fundamental Rights of the European Union, which states that the EU “recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties” ("EU accession to the European Convention on Human Rights (ECHR)", Europa.eu). Finally, it could be mentioned that ECHR should be

considered as a starting point regarding any consideration for fundamental rights on the European level.

ECHR convention is quite different from the USA Constitution in many regards. Regarding company`s fundamental rights, some of the articles of the Convention contains direct indications that the certain fundamental rights are applicable for the legal entities as well. According to the Article 10 of the ECHR Convention, "This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises". Additionally, Article 34 also mentioned companies and provides as : "The Court may receive applications from any person, non-governmental organisation or group of individuals". Furthermore, Article 1 of Protocol 1 to the Convention, which was opened for signature in 1951, contains the following sentence: "Every natural or legal person is entitled to the peaceful enjoyment of his possessions." (Council of Europe, 1952., pr.2).

One of the first ECHR cases in which the Court has established that the companies have right to freedom of expression under article 10 of the European Convention of Human Rights was the case of ***Sunday Times v. United Kingdom***, in which the European Court of Human Rights held that an injunction restraining the Sunday Times from publishing an article related to a settlement being negotiated out of court violated its freedom of expression. The newspaper had published articles concerning the settlement negotiations for the "thalidomide children," following pregnant women's use of the drug thalidomide which resulted in severe birth defects. The newspaper had criticized the settlement proposals, and subsequently, an injunction was issued based on the claim that future publications would constitute contempt of court (The Sunday Times v. United Kingdom, 1979).

The Court found that the interference was proscribed by law and pursued the legitimate aim of safeguarding the impartiality and authority of the judiciary. However, it was not necessary in a democratic society. The Court observed that the right to freedom of expression guarantees not only the freedom of the press to inform the public but also the right of the public to be properly informed, and the thalidomide disaster was a matter of

undisputed public concern. The court noted that the proposed article was moderate and balanced in its arguments on a topic that had been widely debated in society, and therefore the risk of undermining the authority of the judiciary was minimal (The Sunday Times v. United Kingdom, 1979).

Regarding above-mentioned case, ECHR delivered its main argumentation and opinion based on the case of ***New York Times Co. v. Sullivan***. In that case, the United States Supreme Court held that the First Amendment to the U.S. Constitution restricts the ability of public officials to sue for defamation, thereby protecting freedom of speech and freedom of the press. The case arose from an advertisement published by the New York Times that contained some inaccuracies and was critical of the Montgomery, Alabama police. L.B. Sullivan, a Montgomery city commissioner, sued the Times for defamation on the basis that as a supervisor of the police, statements in the ad were personally defamatory. The Court found that Alabama's libel laws did not provide sufficient protection for freedom of the press. The Court extended constitutional protections to alleged libel by invoking the First and Fourteenth Amendments to prohibit elected officials from recovering damages for false statements made regarding their official conduct unless they were made with "actual malice". "Actual malice" created a different fault standard than ill-will, and required a plaintiff to prove with clear and convincing evidence that false or inaccurate statements were made with knowledge of its falsity, or with a reckless disregard for the truth (New York Times Co. v. Sullivan, 1964).

Very important development in terms of the application of freedom of expression for companies and legal entities, is the ECHR decision ***Airey v Ireland***, in which the Court changed its previous attitude and approach according to which economic and social rights were considered as less important comparing to the civil and political aspects of the fundamental rights and freedoms. In aforementioned decision the Court delivered an argumentation that: "while the rights enshrined in the Convention are essentially civil and political, many of them have implications of a social or economic nature" (Airey v. Ireland, 1981).

Another important case is ***Animal Defenders International v. United Kingdom***. In that case, European Court of Human Rights (ECHR) held that the UK authorities had violated the applicant's right to freedom of expression under Article 10 of the Convention by preventing them from airing an advertisement on television that criticized the use of animals in circuses. The case originated from an application against the United Kingdom of Great Britain and Northern Ireland lodged with the European Commission of Human Rights by Animal Defenders International, a non-governmental organization based in London. The applicant complained about the prohibition on paid political advertising by section 321 (2) of the Communications Act 2003. The ECHR held that the ban on political advertising on television and radio did not violate the right to freedom of expression under Article 10 of the Convention. However, the ECHR found that the ban on political advertising on television and radio was too broad and that it prevented the applicant from expressing its views on a matter of public interest. The ECHR held that the ban was not necessary in a democratic society and that it violated the applicant's right to freedom of expression under Article 10 of the Convention. The ECHR also held that the ban on political advertising on television and radio was not a proportionate restriction on the applicant's right to freedom of expression. The ECHR noted that there were other means by which the applicant could have expressed its views, such as through the press, the internet, and other media (Animal Defenders International v. United Kingdom, 2013).

EU Standard

The European Union Charter of Fundamental Rights recognizes the freedom to conduct a business in accordance with Union law and national laws and practices. The Charter also enshrines the freedom to conduct a business as a fundamental right. However, there is no formal definition of the distinction between public and private companies under EU law ("EU Charter of Fundamental Rights", European Commission).

Even though EU Law acknowledges ECHR convention and conventional rights, EU law itself delivers slightly different approaches. After the 1950s, when the most important, founding treaties of EU has been amended , main focus of the Union has become economic. According to the Article 3, paragraph 3 of the Treaty of the European Union, its indicated that the Union "shall work for the highly competitive e social market economy, aiming at full employment and social progress". Additionally, the treaty contains various requirements related to its policies in the fields of social, education, health, environmental or consumer protection. Hence, unlike ECHR convention it can be considered that the founding treaties of the EU are more concerned on the economic aspects of the fundamental rights and economic rights itself, than others (Jacqué, 2014).

To be more specific, under the EU law, right to freedom of expression is applicable to the legal entities, such as companies, as well. Which on the other hand includes right to express opinions, ideas or information. his right is enshrined in the Charter of Fundamental Rights of the European Union (CFR) (European Union Agency for Fundamental Rights, 2019) and is protected by various legal instruments, including the Treaty on the Functioning of the European Union (TFEU) (Official Journal of the European Union, 2012). This right has discussed and reviews in the case law of the Court of Justice of European Union and the Court has developed several landmark decisions regarding the above mentioned issue.

One of the initial case which kind of indirectly supported the legal entities right to freedom of expression and mainly reinforced the principle of freedom of establishment was ***Centros Ltd. Case (1999)*** (Case C-212/97, Centros Ltd. v. Erhvervs- og Selskabsstyrelsen, 1999). The main question during the case discussion was between Centros Ltd. a private company (which was registered in England and Wales) and the Danish Department of Trade`s authority (The trade and Companies Board "The Board") whether that authority was entitled to refuse to register a branch of above mentioned private company in Denmark (Case C-212/97, Centros Ltd. v. Erhvervs- og Selskabsstyrelsen, 1999., p.2). As the Court has defined in the decision, The provisions of the founding treaty regarding the freedom of establishment of the companies governs the formation of the companies , which means act of registration, having main place of business and generally to carry out business effectively

(Case C-212/97, Centros Ltd. v. Erhvervs- og Selskabsstyrelsen, 1999). The Court assessed the denial of the registration of company`s brunch by a member state as "abuse" and "fraudulent conduct" which restricts legal entities to befit from the Community law regarding one of the fundamental rights which is right to establishment (Case C-212/97, Centros Ltd. v. Erhvervs- og Selskabsstyrelsen, 1999). Based on the Courts established case law and practice, if there is the case of national measures which hinders, restricts or makes the enjoyment of fundamental freedoms guaranteed under the community treaties more difficult, must fulfil 4 main preconditions : 1. Measures should be applied in a manner which is not discriminatory; 2. Must be justified under the general, public interest concept; 3. Measures should be in accordance with the achievement of specific objective which they pursue and 4. They must not be beyond of necessity (Case C-212/97, Centros Ltd. v. Erhvervs- og Selskabsstyrelsen, 1999).

Another important case which also concerns the concept of freedom of expression of private companies, is ***Google Spain SL and Google Inc. v. AEPD and Mario Costeja González (2014)***. Even though main legal question in the case arose regarding the notion of "right to be forgotten" and the case dealt with the impact on search engine operators as much as the Court of Justice of the European Union decided in the case that private individuals have right to demand and request of removal of specific, sensitive personal data even if the information itself is correct and accurate, CJEU also emphasized the necessity and importance of the balance between right to privacy of private individuals on the one hand and right to freedom of expression of companies/corporations on the other hand (Case C-131/12, Google Spain SL and Google Inc. v. Agencia Española de Protección de Datos (AEPD) and Mario Costeja González, 2014).

One of the most recent case relating to the research topic is ***European Commission v. Hungary (2021)***. In this case, the CJEU addressed Hungary's restrictions on foreign-funded civil society organizations (CSOs). The CJEU held that the Hungarian legislation imposed disproportionate and unjustified restrictions on the freedom of association and expression of CSOs, including those funded from abroad (Case C-650/18, European Commission v. Hungary, 2021).

Difference between Private Company and State Institutions regarding Fundamental Rights and Freedoms

Private companies and state institutions differ significantly in their approach to fundamental rights and freedoms. Private companies are primarily driven by profit-making motives, while state institutions, such as government bodies and public agencies, are responsible for upholding and protecting the rights and freedoms of individuals within their jurisdiction. This difference in purpose and accountability leads to distinct variations in the way these entities handle fundamental rights (Hummel, 2018., p.6).

State institutions have a legal obligation to safeguard fundamental rights and freedoms. These rights are enshrined in constitutional and legal frameworks, which establish the government's responsibility to ensure their protection. State institutions are required to respect, protect, and fulfil these rights, and they can be held accountable for any violations (Kovalchuk et al., 2021., p.29). In contrast, private companies are not inherently bound by the same legal obligations to protect fundamental rights, as their primary objective is profit generation. While they must adhere to applicable laws and regulations, they generally have more leeway in their operations and are not directly responsible for safeguarding human rights (Arnold, 2016., p.257).

State institutions also have positive obligations in relation to human rights. This means they must take proactive measures to secure and promote these rights. For instance, they may be required to establish laws, policies, and programs that ensure equal opportunity, non-discrimination, and access to essential services for all individuals. Private companies, on the other hand, do not have the same level of positive obligation. While they should respect human rights in their operations, they are not typically mandated to actively promote or advance these rights beyond legal compliance (Hristova, 2013., p.20).

State institutions are allowed to impose limitations on certain rights and freedoms, but only under specific circumstances and in accordance with legal procedures. These limitations

are often justified in the interest of public order, national security, public health, or the rights of others. Private companies, however, do not possess the same authority to restrict fundamental rights, unless they are acting within the boundaries of applicable laws and regulations. For example, private companies may have policies in place that limit freedom of speech within their organizations, but these restrictions are generally confined to the employment relationship and do not extend to the broader public (Zavalny, 2019).

Additionally, State institutions are subject to various mechanisms of accountability, including judicial review, oversight by independent bodies, and public scrutiny. Individuals can seek legal remedies and challenge the actions of state institutions if they believe their fundamental rights have been violated. Private companies, on the other hand, are primarily held accountable through market forces, consumer preferences, and legal recourse in cases of specific violations. While private companies may face legal consequences for infringing on certain rights, their accountability mechanisms are typically less robust and comprehensive compared to those of state institutions (Mowbray, 2004).

In summary, the fundamental difference between private companies and state institutions lies in their primary objectives, legal obligations, and accountability mechanisms. State institutions have a distinct responsibility to protect, promote, and fulfil fundamental rights and freedoms, while private companies are primarily focused on their business operations and profitability. The positive obligations and limitations on rights also vary between these entities, as state institutions are often required to take proactive measures and may impose limitations in the interest of public welfare. Meanwhile, private companies are generally subject to fewer obligations and restrictions and are accountable through market forces and legal recourse.

Termination of Collaboration Based on Incompatible Values from Labour Law Perspective

Private companies, as entities separate from the state, possess the right to express themselves and establish their values within the boundaries of the law. However, the exercise of this right must be in harmony with labour laws, which aim to protect employees' rights and prevent discrimination (Joly, "Creating a Meaningful Corporate Purpose", Harvard Business Review).

While private companies have the right to express their values, these rights are not absolute. The limitations typically arise when the expression infringes upon the rights of employees, such as freedom of speech, privacy, or protection against discrimination. This section explores the boundaries and limitations placed on private companies' freedom of expression in the context of labour law.

In the United States, most employment is considered "at-will," meaning that employers can generally hire or fire employees for any reason that is not illegal. This principle allows companies to make decisions based on their values and the impact an individual's behaviour may have on their reputation or work environment. As I have mentioned, While employers have some discretion in hiring decisions, they must still comply with anti-discrimination laws. These laws prohibit employment discrimination based on protected characteristics such as race, gender, religion, and national origin. However, holding certain beliefs or expressing controversial opinions generally does not enjoy the same level of protection as protected characteristics (Haskins, 2015., p.2).

Labor laws emphasize the principle of non-discrimination, ensuring equal opportunity for all applicants. However, private companies may argue that their values are integral to their business operations and seek to hire individuals who align with those values. This section examines the tensions between non-discrimination principles and a company's desire to maintain certain values. In some jurisdictions, labour laws recognize the concept of bona fide occupational qualifications (BFOQs). BFOQs allow private companies to make employment decisions based on certain characteristics or attributes when they are reasonably necessary for the job's performance. This section explores the applicability and

limitations of BFOQs in the context of upholding company values (Heymann et al., 2023., p.17).

When a company's values conflict with an individual's behaviour or expressed views, courts may need to balance the rights of both parties. They consider factors such as the significance of the individual's behaviour, the impact it may have on the company's reputation or mission, and the potential harm to other employees or stakeholders.

Companies often consider the potential public relations and reputational consequences of employing individuals whose behaviour or views conflict with their values. Negative public perception and backlash can impact a company's brand, consumer trust, and business relationships.

Boy Scouts of America v. Dale (2000): The Supreme Court ruled that the Boy Scouts of America, as a private organization, had the constitutional right to exclude a gay scoutmaster based on their expressive association rights. This case highlighted the tension between an organization's freedom of expression and an individual's right to be free from discrimination (Boy Scouts of America et al. v. Dale, 2000).

Masterpiece Cakeshop v. Colorado Civil Rights Commission (2018): This case involved a bakery owner who refused to create a wedding cake for a same-sex couple based on his religious beliefs. The Supreme Court ruled in Favor of the bakery owner, emphasizing the importance of religious freedom, but also noted that the decision should not be seen as a broad exemption from anti-discrimination laws (Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission, 2018).

Google LLC v. National Labor Relations Board (2021): The National Labor Relations Board (NLRB) filed a complaint against Google, alleging that the company unlawfully terminated employees for engaging in protected concerted activities. The case raised questions about whether the company's actions were justified based on expressing its corporate values versus infringing on employees' rights to engage in protected speech and organize (Google LLC v. National Labor Relations Board, 2021).

Tesla Motors, Inc. and the United Auto Workers (2019): This case involved allegations that Tesla unlawfully terminated employees for their organizing activities related to unionization efforts. The NLRB found that Tesla violated federal labour law by interfering with employees' rights to engage in protected activities (Tesla Motors, Inc. and the United Auto Workers, 2019).

These cases demonstrate the complexities involved in balancing the rights of organizations and individuals when it comes to employment decisions based on conflicting values or behaviours.

There are also several cases in USA case law, which demonstrates how the concept of freedom of expression intersects with employment law, particularly in relation to protected concerted activity, workplace policies, and the rights of public employees. For instance:

National Labor Relations Board v. Pier Sixty (2015): In this case, an employee of Pier Sixty, a catering company, posted a profanity-laden message on Facebook criticizing his supervisor and the company during an unionization campaign. The National Labor Relations Board (NLRB) argued that the employee's social media activity was protected concerted activity under the National Labor Relations Act (NLRA). The Second Circuit Court of Appeals agreed, ruling that the employee's post was protected speech as it involved workplace conditions and his right to engage in collective action (National Labor Relations Board v. Pier Sixty, LLC, 2017).

NLRB v. Starbucks Corp. (2007): In this case, Starbucks implemented a policy that prohibited employees from wearing any pins or buttons on their uniforms, except for small company-issued buttons. The NLRB argued that this policy infringed on employees' rights to engage in protected concerted activity. The Second Circuit Court of Appeals held that the policy was overly broad and violated the NLRA, as it restricted employees' right to wear union insignia, which is considered a form of protected expression (NLRB v. Starbucks Corp., 2007).

Garcetti v. Ceballos (2006): While not directly related to corporate entities, this case involved the free speech rights of public employees. Richard Ceballos, a deputy district

attorney, claimed retaliation after he wrote a memo criticizing a search warrant. The Supreme Court held that when public employees speak pursuant to their official duties, their speech is not protected under the First Amendment. This case set a precedent that restricts the free speech rights of employees in certain circumstances (Garcetti v. Ceballos, 2006).

Claims Regarding Discrimination

Discrimination in labour law is a significant concern globally, as it undermines the principles of equality, fairness, and human rights in the workplace. It refers to the unfair treatment or unfavourable behaviour directed towards an individual or group of individuals based on protected characteristics, such as race, gender, age, religion, disability, sexual orientation, and more. The concept encompasses various forms of discrimination, including direct, indirect, systemic, and harassment. Labor laws differ across jurisdictions, but many countries have anti-discrimination legislation in place to protect employees from unjust treatment. These laws aim to ensure equal opportunities, promote diversity, and prohibit discriminatory practices in employment. Key legislative frameworks include the Civil Rights Act of 1964 in the United States (Civil Rights Act of 1964, Pub.L. 88-352, 78 Stat. 241 (1964)), the Equality Act 2010 (Equality Act 2010, c. 15 (U.K.)) in the United Kingdom and the European Union's Employment Equality Directive (Council Directive 2000/78/EC, 2000).

To establish a claim of discrimination, the first precondition is that the act or decision must be based on one or more protected characteristics recognized under the applicable labour law. Common protected characteristics include race, colour, sex, national origin, religion, age, disability, and pregnancy (Pager & Western, 2012., p.22).

Private companies often establish values and cultural norms that reflect their mission, vision, and brand. When an individual's expressed opinion or activities contradict these

values, it can create conflicts and potential reputational risks for the company. Consequently, companies may argue that their decisions are necessary to maintain consistency and protect their organizational culture (Christian, "Are workers really quitting over company values?", BBC).

The termination of an employee's contract based on the expression of an opinion that contradicts a company's values raises questions about how discrimination basis can be applied in such cases. This comprehensive overview will explore the legal, ethical, and practical considerations surrounding termination for expressing opinions against company values. Additionally, we will examine whether an opinion itself can be considered a discrimination characteristic and discuss relevant cases and decisions (Elias, 2018., p.871).

While the expressed opinion itself may not be a protected characteristic, it is crucial to consider the potential impact on individuals who possess protected characteristics. If the expressed opinion creates a hostile work environment or perpetuates discrimination or harassment based on protected characteristics, the termination may be justified under discrimination laws.

Freedom of expression is a fundamental right, but it can be limited in the context of employment. Private companies have the right to protect their reputation, maintain a positive work environment, and uphold their values. Balancing employees' rights to express their opinions with the need to create a cohesive and inclusive workplace is a delicate task (Gunatilleke, 2021., p.91-92).

One fundamental aspect of this issue lies in the tension between an individual's freedom of speech and an employer's right to protect their reputation and maintain a positive work environment. While freedom of speech is a constitutional right in many countries, it is important to understand that it generally protects individuals from government censorship, not from consequences in private employment settings.

The termination of an employee's contract due to the expression of sexist, racist, or any other controversial opinions raises complex legal and ethical considerations. By examining

relevant legal principles, ethical perspectives, and practical implications, we can gain a deeper understanding of the issues involved.

Discrimination laws generally protect individuals from adverse treatment based on certain protected characteristics, such as race, gender, religion, and more. However, expressing opinions, even if offensive or objectionable, may not be explicitly protected under discrimination laws. The challenge lies in determining whether termination based on expressed opinions falls within the scope of discrimination law (Donohue, 2008., 1391).

Although expressed opinions might not be a protected characteristic, some jurisdictions recognize discrimination based on conduct that creates a hostile work environment or violates the dignity and rights of others. This can include conduct that perpetuates sexism, racism, or other forms of discrimination. Employers may argue that such conduct undermines their commitment to maintaining an inclusive and respectful workplace.

Employment contracts often include provisions regarding employees' behavior, adherence to company policies, and alignment with organizational values. Violation of these provisions may give employers grounds for termination, as long as they are clear, reasonable, and proportionate to the situation. A well-drafted code of conduct can provide guidance on acceptable behavior and create a framework for addressing conflicts between personal opinions and company values.

Suppose an employee consistently expresses sexist or racist opinions that create a hostile work environment, impact team dynamics, or harm the company's reputation. In such cases, employers may argue that the termination is not based on the expressed opinion itself but on the adverse effects it has on the workplace environment.

In situations where an employee expresses an opinion that does not directly create a hostile work environment but conflicts with the company's values, employers face a more nuanced challenge. Striking a balance between promoting diversity of opinions and maintaining a cohesive organizational culture can be complex, and each case must be evaluated individually.

Ethical perspectives vary when it comes to balancing freedom of expression and the impact of expressed opinions on others. Some argue that employers should prioritize creating a safe and inclusive environment over protecting controversial opinions, while others emphasize the importance of open dialogue and fostering a culture that encourages respectful debate.

Private companies must carefully navigate the balance between protecting their business interests and respecting the rights of their employees. Finding a middle ground that upholds ethical standards while avoiding discriminatory practices is crucial.

To address potential conflicts, companies should establish clear policies and codes of conduct that outline expectations regarding employee behavior and the consequences for violations. These policies should be communicated effectively to employees to ensure transparency and minimize misunderstandings.

When faced with situations where an individual's opinions or activities are at odds with a company's values, it is essential to conduct a thorough case-by-case analysis. Employers should consider whether the expressed opinion directly impacts the individual's ability to perform their job or poses a significant risk to the company's reputation. Responses should be proportional and aligned with the severity of the conflict.

Chapter V. Overview of the Relevant Case Law and "Me Too" Campaign

People of the State of California v. Harvey Weinstein

Harvey Weinstein, a prominent Hollywood film producer, became the central figure in a wave of sexual misconduct allegations that emerged in October 2017. The allegations against Weinstein spanned several decades and were made by numerous women, including

well-known actresses and former employees. These allegations ranged from sexual harassment to rape (Bhattacharyya, 2018., p.2).

Before the court investigations began, media reports and investigative journalism played a crucial role in bringing the allegations against Weinstein to light. The New York Times and The New Yorker published detailed exposés, which included testimonies from victims and accounts of Weinstein's alleged predatory behavior. These reports prompted more women to come forward with similar allegations (Bhattacharyya, 2018., p.2).

As the allegations gained widespread attention, they led to the #MeToo movement, which shed light on the prevalence of sexual harassment and assault in various industries. The public outcry and support for the victims were instrumental in encouraging further investigation and legal action (Bhattacharyya, 2018., p.2).

In May 2018, Weinstein was charged with multiple criminal offenses, including rape and sexual assault, in New York. The legal proceedings involved various stages, including pre-trial hearings, evidentiary motions, and the trial itself. The prosecution presented testimonies from several women who accused Weinstein of sexual misconduct, while the defense argued against the credibility of these accounts.

During the trial, which commenced in January 2020, the jury heard extensive evidence and witness testimonies from both sides. The prosecution aimed to establish that Weinstein had engaged in a pattern of predatory behavior and abused his power in the entertainment industry. The defense sought to challenge the credibility of the witnesses and raise doubts about the events that transpired (People of the State of California v. Harvey Weinstein, 2022).

In February 2020, Harvey Weinstein was found guilty of criminal sexual assault and rape in the third degree. The jury acquitted him of the more serious charges of predatory sexual assault. The verdict marked a significant milestone for the #MeToo movement, as it demonstrated that high-profile individuals could be held accountable for their actions.

Following the conviction, Weinstein faced legal consequences. In March 2020, he was sentenced to 23 years in prison. The severity of the sentence reflected the court's acknowledgment of the impact his actions had on the victims and the broader implications of his behavior.

The legal qualification of the charges against Weinstein was based on the specific legal definitions in the jurisdiction where the trial took place. The prosecution presented evidence and arguments to establish that Weinstein's actions met the criteria for criminal sexual assault and rape as defined by the applicable laws. The defense, on the other hand, sought to challenge these qualifications and present alternative interpretations of the events.

In summary, Harvey Weinstein's legal case involved numerous allegations of sexual misconduct, leading to a high-profile trial that resulted in his conviction for criminal sexual assault and rape. The case had a significant impact on public awareness of sexual harassment and assault, and it served as a catalyst for the #MeToo movement. The legal procedures, evidentiary hearings, witness testimonies, and subsequent conviction and sentencing showcased the consequences faced by Weinstein for his actions. The consequences of the case in terms of cancel culture were that Weinstein’s reputation was severely damaged, and many companies and individuals distanced themselves from him. Weinstein’s products were also cancelled by several companies, including The Weinstein Company, which filed for bankruptcy in 2018.

The Harvey Weinstein case had a profound impact on the phenomenon often referred to as "cancel culture." The Weinstein case played a significant role in igniting discussions around accountability, power dynamics, and the limits of cancel culture.

When the allegations against Weinstein became public, they sparked a wave of outrage and condemnation from people around the world. The severity and scale of the accusations, along with the visibility and influence of the entertainment industry, contributed to the case becoming a focal point for discussions on sexual harassment and assault. This led to a heightened awareness cof the need for change within the industry and society as a whole.

One of the key aspects of the Weinstein case that fueled the cancel culture conversation was the exposure of the power dynamics inherent in Hollywood and other industries. Weinstein was a powerful figure in the film industry, and the allegations against him shed light on the abuse of power and the exploitation of vulnerable individuals. This revelation prompted discussions about the broader systems and structures that enable such misconduct to occur and go unchecked.

The revelations surrounding Weinstein also had a significant impact on the perception of victims and their willingness to come forward. The courage and strength demonstrated by the survivors who spoke out against Weinstein encouraged other victims of sexual harassment and assault to share their experiences. The ensuing #MeToo movement created a platform for these individuals to share their stories, often leading to a public reckoning for the accused.

However, the Weinstein case and the subsequent #MeToo movement also sparked debates about the nature and scope of cancel culture. Critics argue that cancel culture can sometimes result in online mobs and a rush to judgment without allowing due process or considering the possibility of redemption. They express concerns about the potential for false accusations, character assassination, and the long-lasting consequences that can arise from cancel culture.

Supporters of cancel culture, on the other hand, argue that it is a necessary response to hold individuals accountable, particularly those in positions of power, and challenge the status quo. They believe that cancel culture creates a safer environment for victims, encourages cultural change, and highlights systemic issues that need addressing.

The Weinstein case acted as a catalyst for numerous other high-profile individuals being called out and facing consequences for their alleged misconduct. Figures from various industries, including entertainment, politics, and media, faced public scrutiny, investigations, and professional repercussions. This trend further fueled the discussions surrounding cancel culture, raising questions about the appropriate response to allegations and the potential for rehabilitation and forgiveness.

As the discussion around cancel culture evolved, so did the conversation about its limitations and potential negative impacts. Some argue that cancel culture can stifle open dialogue, discourage dissenting opinions, and create an environment of fear and self-censorship. Others assert that cancel culture can be weaponized and used to silence marginalized voices or enforce conformity.

The Harvey Weinstein case, with its far-reaching implications and the subsequent rise of the #MeToo movement, undoubtedly played a pivotal role in shaping the ongoing discourse on cancel culture. It highlighted the power dynamics, accountability, and consequences associated with allegations of sexual misconduct. The case also sparked debates about the efficacy and ethical considerations of cancel culture, leading to a broader examination of societal norms, power structures, and the need for systemic change.

Overall, the Weinstein case served as a catalyst for important conversations about accountability, power imbalances, and the boundaries of cancel culture. It prompted society to reassess the treatment of victims, question the behaviors and actions of influential figures, and push for systemic change to prevent further instances of sexual harassment and assault.

John Christopher Depp II v. News Group Newspapers Ltd. and Dan Wootton and John C. Depp, II v. Amber Laura Heard

Another infamous case regarding the "Cancel Culture" indeed are legal cases involving famous American actor and actress, Johny Depp and Amber Heard. Regarding the issue there are two legal cases, which can be discussed considering the research topic: John Christopher Depp II v. News Group Newspapers Ltd (John Christopher Depp II v. News Group Newspapers Ltd and Dan Wootton, 2020) and John C. Depp, II v. Amber Laura Heard (John C. Depp, II v. Amber Laura Heard). Johny Depp and Amber Heard married in 2015 and started a divorce proceeding in 2016 after which Amber Heard made a statement that Johny Depp has abused her physically which was denied by the actor (Shah,

"What to Know About Johnny Depp and Amber Heard's Defamation Trial", Time). After that, On April 27, 2018, The Sun newspaper published an article titled “GONE POTTY How Can J K Rowling be ‘genuinely happy’ casting Johnny Depp in the new Fantastic Beasts film?”. The article was later updated on April 28, 2018, with a new headline that read “GONE POTTY How Can J K Rowling be ‘genuinely happy’ casting Johnny Depp in the new Fantastic Beasts film after assault claim?”. The article’s content remained unchanged, and a hard copy edition of the newspaper included the article under the updated headline. That has became a reason for Mr. Depp to sue against the above mentioned newspaper and the author of the publication Dan Wootton for defamation.

In accordance with the defence of truth as stated in the Defamation Act 2013, the defendants aimed to establish that the content of the article was mostly accurate. Their objective was to demonstrate that Depp engaged in violent behaviour towards Heard, resulting in significant harm to her and causing her to fear for her life. Mr. Justice Nicol ruled that the overall message conveyed by the article was largely true and rejected Depp's lawsuit. He specifically examined 14 incidents that were said to illustrate Depp's abusive conduct towards Ms. Heard and concluded, after considering a wealth of information and conflicting accounts, that a significant majority of the incidents and allegations were believable. Therefore, they satisfied the legal standard of proof, demonstrating that the article was more likely true than not. In a subsequent verdict on March 25, 2021, the Court of Appeal denied Mr. Depp's request for permission to challenge Mr. Justice Nicol's dismissal of his defamation lawsuit against the Sun ("John Christopher Depp II v. News Group Newspapers Ltd. and Dan Wootton", Global Freedom of Expression).

Another important legal case arose when in December 2018, short newspaper column has been published by Amber Heard in the Washington Post titled "Amber Heard: Challenging the Prevalence of Sexual Violence and Confronting the Consequences of Speaking Out." Within the article, Heard expressed, "Then, approximately two years ago, I found myself thrust into the public eye as a representative of domestic abuse, subject to the full weight of societal backlash when women dare to share their experiences. [...] I had the unique opportunity to witness firsthand how institutions shield men accused of abusive

behaviour." She further revealed that this ordeal resulted in the loss of a film role and a global fashion brand's advertising campaign. The op-ed urged Congress to renew the Violence Against Women Act, without explicitly naming Depp.

Johnny Depp, the plaintiff, initiated a legal action by filing a defamation lawsuit against his former spouse, Amber Heard, who served as the defendant. Depp raised three separate allegations of defamation and sought $50 million in monetary compensation. In response, Heard counterclaimed for $100 million, accusing Depp of three instances of defamation based on statements made by Depp's legal counsel. Following the trial, the jury reached a verdict, concluding that the title and two statements made in Heard's op-ed were false and had defamed Depp. Moreover, the jury found that these false claims were made with malicious intent. Consequently, Depp was awarded $10 million in compensatory damages and an additional $5 million in punitive damages. However, due to a legal limitation imposed by Virginia state law, the punitive damages were subsequently reduced to $350,000 (Gupta, "Johnny Depp Vs Amber Heard Case: Domestic Violence On Males: Laws Around The World And In India", Lawyers Club India).

The legal battles between Johnny Depp and Amber Heard have had a significant impact on Mr. Depp's career and reputation. After Ms. Heard made allegations of domestic violence against Mr. Depp in 2016, his film work and earnings dropped dramatically. In 2017, Mr. Depp made three studio and two independent films with fees of about $35 million, but in 2018, he made just two independent films for fees of $4 million. After the first case verdict, Depp resigned from the Fantastic Beasts film series at the request of Warner Bros., the film's production company. As the legal battles unfolded, various damaging allegations and evidence were presented, tarnishing Depp's public image. The intense media coverage surrounding the case resulted in a substantial backlash against him. Many people expressed their disappointment and withdrew their support, leading to a significant decline in his popularity. The fallout from these events had severe consequences for Depp's career. He faced professional setbacks, including being dropped from the "Pirates of the Caribbean" franchise, which had been one of his most iconic roles. Additionally, he lost other film projects, endorsements, and partnerships as companies distanced themselves from the

controversy (Helmore, "Heard's abuse allegations 'catastrophic' to Depp's career, agent says", The Guardian).

Anthony Rapp v. Kevin Spacey Fowler and Sexual Assault Trial

Anthony Rapp, an individual involved in the performing arts, made allegations against Kevin Spacey, pointing out that Spacey made inappropriate advances of a sexual nature towards Rapp when Rapp was 14 years old and Spacey was 26 years old. The purported incident occurred in 1986 at a gathering in Manhattan. Rapp spoke up about these accusations in 2017, during the time of the #MeToo movement. In 2022, a jury in a civil court concluded that Spacey did not commit any sexual abuse against Rapp (Munoz, "Civil court jury finds Kevin Spacey did not molest actor Anthony Rapp in 1986", ABC News).

In January 2019, Kevin Spacey faced legal proceedings in a Nantucket courtroom, accused of a charge related to sexual assault for allegedly touching the son of former Boston news anchor Heather Unruh in 2016. Spacey pleaded not guilty to the charge with the representation of his attorney. In July 2019, the case was dismissed as the accuser asserted their Fifth Amendment right against self-incrimination (Morrow, "Kevin Spacey's UK sexual assault trial, explained", The Week).

In October 2022, Kevin Spacey was acquitted of charges of sexual misconduct in a trial held in Los Angeles. The charges were pressed by an individual who accused Spacey of sexually assaulting them in 2016. The judge dismissed the case after the prosecution failed to provide sufficient evidence to prove the allegations beyond a reasonable doubt (Mouriquand, "Kevin Spacey not guilty in US sexual misconduct trial", Euronews).In July 2023, Kevin Spacey was found not guilty of all charges of sexual assault by a jury in a civil court in London. The jury acquitted him of seven counts of sexual assault and two counts of other serious sexual offenses (Nicholls & Edwards, "Actor Kevin Spacey cleared of all charges of sexual assault", CNN).

The allegations against Kevin Spacey have had a significant impact on his professional career and reputation. He was removed from the Netflix series "House of Cards," and his scenes in the movie "All the Money in the World" were re-filmed with Christopher Plummer. Additionally, Spacey has been instructed to compensate the producers of "House of Cards" with millions of dollars for breaching his contract through the sexual harassment of crew members (The Associated Press, "Kevin Spacey ordered to pay $31M to 'House of Cards' makers over firing for alleged sexual misconduct", NBC News).

A Brief Overview of the cases in terms of Freedom of Expression of the Private Companies

Hence, above mentioned legal battles and allegations are very clear example of contradicting interests of private individuals or private companies when we are talking about cancelling people because of the allegations. In case of Johny Depp, even though he was finally found innocent regarding the domestic violence allegations, during the legal proceedings, before the he has faced lot of career or financial damages by removing him from movie projects or campaigns. But in his case, such decisions have been made by other private companies, such as, mentioned Warner Bross, which also has freedom of expression and its right to make decisions regarding termination of contracts in light of the company`s financial prospects and benefits.

As much as public expressed its negative attitude towards certain person and the business is automatically related to the public`s attitudes, we can not require same standard from business-oriented, private entity as state institutions. Such private entities are concern on income, providing and spreading their company`s values and they should be free in their decision-making process. On the other hand, as much as state institutions have different obligations including positive obligation to protect individual`s basic rights, if state institution would make such decision and would fine or otherwise punish private individual because of allegations against him, state institution should be considered as having violated of human rights.

Conclusion

Meanwhile the paper "Cancel Culture and the Freedom of Expression of Private Companies" several legal topics have been discussed in details but the most important issue regarding that and fundamental aspect of the research related to the consequences of the cancelling private individuals from the perspective of legal entities and their right to exercise freedom of expression.

First of all, the concept of the "Cancel Culture" was defined and it became apparent that even though some people automatically connects this phenomenon to the social campaigns or boycotts started with the social networks, in most of the cases „Cancel Culture" also implies actual legal consequences for that individuals such as interference in their freedom of expression; termination working contract; financial, moral or career-related damages and etc.

On the other hand, the research mainly was developed to form and construct a legal perspective of legal entities, their rights and responsibilities, difference from state institutions in terms of exercising freedom of expression and evaluation of the cancelling individuals from their perspective.

Main legal discourse when it comes to the issue of "Cancel Culture" might be whether some legal entities, who response public boycott by terminating working relationships with certain individuals, violate rights and freedoms of the individual. Some people confuse state responsibilities and responsibilities of private organizations with each other and speculate that modern world and the concept of "Cancel Culture" became historically very well known form of censorship, when individuals were targeting because of their not desirable opinions and punished by the state. As much as in modern reality legal entities or private organizations have increasingly important role in the today`s society, discourse of the debate might be misleading and it was important to discuss the main concepts of private organizations and state institutions in details and evaluate the main question from legal perspective, whether private organizations are legally able to censor individuals and violate

their fundamental rights by the fact that they might form their decisions through taking into account public attitude, company`s values and principles or other business-related interests.

For the fulfilling of above mentioned aim, research paper has been divided into several topics and towards the direction to build the legal concept, essence and characteristics of private corporations in light of the fact that unlike state institutions, private legal entities might also be entitled to enjoy and exercise several fundamental rights and freedoms.

Hence, firstly, I tried to define the concept of freedom of expression and its two dimensional character in terms of balancing rights of private individuals on the one hand and corporations on the other. For that reason, I briefly overviewed the legal concept of freedom of expression from the theoretical as well as case law perspective and as it became apparent, freedom of expression might be invoked in both cases: when right of private individual is restricted to express his/her opinions and when corporations for their main values, principles or fundamental ideas regarding everyday social issues. Even though when we talk about fundamental rights and freedoms, we think about human beings in the first place, throughout the development of the legal rules it became apparent that not only individuals, but also legal entities might be entitled to exercise certain rights and freedoms. Discussing this issue and evaluating of the case law was crucial in order to express and show that private individuals and legal entities might be equally entitled regarding the certain fundamental rights and one of the such right is freedom of expression. Even though corporations` rights related to the expressing their values, establishing main operational principles or policies are regulated by several specific legal rules, general , "umbrella " basis for such possibilities comes from the freedom of expression itself. Therefore, even though it might be kind of confusing, we should see corporation`s perspective of that right and its business interests which is strongly connected to the company`s policies, values or positions towards sensitive social issues in the modern world where everything became transparent and people actively boycott certain products because of the unacceptable position of producing company. From that perspective, I consider that freedom of expression of corporations doesn`t have just theoretical dimensions and from practical

point of view, income of corporations is very much related to the expressed positions, values or policies of the private company.

Besides the overviewing of legal entities` rights in terms of freedom of expression, one of the key points of the research was to discuss main differences between private organizations and state institutions in order to answer question why termination of working relationships or making actions in light of the "Cancel Culture" tendencies, should not be considered as a form of censorship and should not be evaluated in the same way as imposition of legal punishments for unacceptable opinions by the state.

Legal entity itself, is not entitled to adopt law or impose a legal punishment for unacceptable opinions or whatever reasons. Legal entity also doesn't have same positive obligation to guarantee and ensure protection of fundamental rights of human beings. State is characterized with the different level of responsibilities and it might not be equalized with the responsibilities of corporations or other private organizations. In that regard, I also discussed differences between state institutions and private organizations in order to show that from the legal perspective, private companies and their decisions going under different scrutiny than state institutions. Regarding the issue of "Cancel Culture" and its consequences, legal perspective and evaluation can be different when state uses punishment against unacceptable opinion of a private individual and when private company terminate working relationship with the private individual because of the expressed opinion which contradicts company`s values or established policies. In the first case, based on the legal practice of the ECHR or other important international actors in the field of international human rights and freedoms, punishing of person for expressing opinion most probably will be considered as a violation of freedom of expression of a person but termination of working relationship when individual expresses racist opinions, for instance, can be considered as legitimate when company is based on the values of equality and protections from discrimination.

For the purpose to illustrate actual legal consequences of the "Cancel Culture" 3 most famous cases has been discussed and analysed from the perspective of competing interests

of private individuals or corporations and most notably, cases John Christopher Depp II v. News Group Newspapers Ltd. and Dan Wootton; John C. Depp, II v. Amber Laura Heard and Anthony Rapp v. Kevin Spacey Fowler and Sexual Assault Trial shows that even though "victims" of "Cancel Culture" might finally be justified legally, they still experienced moral or material damages because of the allegations made against them. Some movie or entertainment companies terminated their working contracts with mentioned persons based on the allegations and negative public attitudes even though official legal decisions haven`t been yet delivered at that time. So, if we consider that these private companies violated rights of private individuals by delivering their business related decision, we would create another basis for private individuals to sue such companies and claim for the remunerations or damages. From this perspective, clarification of research topic and researching, analysing main characteristics of private organizations has been crucial and decisive to find the solution and differentiate boundaries of private companies and state institutions.

Finally, to briefly clarify again, my main research position, opinion delivered after evaluating theoretical aspects and case studies regarding the issue, is that private companies are free to make business decisions, deliver and establish their values, expressing their social or political standing and if we cannot restrict them in the same way and impose same standards as in case of the state institutions.

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SUMMARY

Cancel Culture and the Freedom of Expression of Private Companies

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This thesis provides in depth analysis of the correlation between "Cancel Culture", its legal consequences for private individuals and freedom of expression of private companies. The topic itself is new and complicated, not many legal authors have examined this issue, hence, it was very important to discuss the modern, infamous phenomenon from the legal perspective and particularly, from the perspective of private companies.

First and second chapters of the research briefly review the concept of the "Cancel Culture" and its connection to the one of the basic rights, freedom of expression, also difference between "cancelling" persons and censorship policy; The third chapter analyses concept of private companies, main differences from state institutions and their entitlement to exercise fundamental rights, especially freedom of expression; Fourth chapter examines the concept of freedom of expression of private companies in details, based on the interpretations of different legal systems and different court

practices, special actions which might be covered by the freedom of expression and competing rights of the private individuals in that process.

The fifth chapter discusses infamous “Cancel Culture” cases in light of the violations or interferences in the fundamental rights of the individuals and the role of private companies regarding that.

Finally, conclusion summarizes the legal issue and expresses opinion regarding the interconnection between individuals rights on the one hand and freedom of expression on the other hand.