

KYIV COURT OF APPEALS

DECREE

IN THE NAME OF UKRAINE

case No. 757/66628/19-ts

proceedings No. 22-ts/824/724/2021

March 10, 2021, Kyiv

Kyiv Court of Appeals as part of the panel of judges:

judge-rapporteur H. M. Kirilyuk,

judges: Reinart I. M., Semenyuk T. A.

under the secretary Pantchoshnia K. O.

considered in an open court session a civil case on the claim of BURISMA HOLDINGS LIMITED (BURISMA HOLDINGS LIMITED) to the People's Deputy of Ukraine Derkach A.L., the Limited Liability Company "Information Agency "Interfax-Ukraine" on the protection of business reputation, recognition of disseminated information as unreliable and refutation of such information, for the appeal of the representative of BURISMA HOLDINGS LIMITED (BURISMA HOLDINGS LIMITED) - attorney Palahytska Hanna Serhiyivna against the decision of the Pechersk District Court of the city of Kyiv dated September 4, 2020, as part of the judge Volkova S. Ya.,

installed:

23.12.2019 BURISMA HOLDINGS LIMITED (BURISMA HOLDINGS LIMITED), represented by H. S. Palahytska, a lawyer, appealed to the court with the specified lawsuit, in which she asked to recognize the information spread about the plaintiff in the title and text of the article "deputy Derkach – Burisma paid Joe Biden \$ 900 000, for lobbying activities, and \$ 16,5 million to company representatives, Kvasnevsky and Hunter Biden among them", which was spread by the People's Deputy of Ukraine Derkach A.L. , by the Limited Liability Company "Information Agency "Interfax-Ukraine" (hereinafter - LLC "Information Agency "Interfax-Ukraine") and posted in the conference room of "Information Agency "Interfax-Ukraine" on the Internet at the link <https://ua.interfax.com.ua/news/general/617824.html> in Ukrainian, at the link <https://ua.interfax.com.ua/news/general/617824.html> in Russian, at the link <https://ua.interfax.com.ua/news/press-conference/617936.html> in English, namely:

"... "Burisma" paid Joe Biden \$900,000 for lobbying activities... and \$16.5 million to company representatives..."; "The former vice president of the USA Joe Biden received \$900,000 for lobbying activities from the oil and gas company "Burisma Group" ...", "... in the materials of the criminal proceedings, the mechanism of receiving money is described by Joe Biden .", "This is the transfer of funds from "Burisma Group" for lobbying activities, according to the investigation, Joe Biden personally through a lobbying company.", "Money in the amount of \$900,000 was transferred to the account of the American company "Rosemont Seneca Partners" ...", "According to the documents, in general for the benefit of (the former president of Poland, since 2014 is an independent director of "Burisma Holdings" - FI) Kvasnevsky , (chairman of the board of independent directors of "Burisma" - FI) A.Apter , (independent director of "Burisma" - FI) D.Archer and Hunter Biden (who also joined the board of directors of independent directors in 2014 "Burisma" - FI) "Burisma" paid no less than \$16.5 million" ...", "... using political and economic leverage on the Ukrainian authorities and manipulating the issues of providing financial assistance to Ukraine, Joe Biden actively contributed to the closure of criminal cases related to with the activities of the former Minister of Ecology of Ukraine N.Zlachevsky, who is the president and owner of Burisma Group. » unreliable and which violates the right to inviolability of the business reputation of BURISMA HOLDINGS LIMITED (BURISMA HOLDINGS LIMITED).

Also asked to recognize the information disseminated regarding BURISMA HOLDINGS LIMITED (BURISMA HOLDINGS LIMITED) by People's Deputy of Ukraine Derkach A.L. during his speech at the press conference, which took place in the conference room of "Information Agency "Interfax-Ukraine" at 10:00 a.m. in the premises of the conference hall of Interfax-Ukraine Information Agency LLC, namely:

"N.Zlachevsky, according to Ukrainian investigators and journalists, contacted Vice President Joe Biden and State Secretary John Kerry through a lobbying company and offered them, according to Ukrainian investigators, to share the profits of the Burizma Group gas production company." is currently in the Ukrainian prosecutor's office, they are contained in the materials of one of the criminal cases against Burizma, and are based on the report of the financial division of the intelligence of Latvia, in favor of two offshore laying companies as well as Kvasnevsky, Apter, Archer and as well as Hunter Biden., the Burizma company paid no less than 16.5 million dollars.", "The son of Joe Biden Hunter Biden was one of the four owners of more than 16.5 million dollars.", "This caused undisguised irritation to Hunter Biden and his fifth visit in two years, I emphasize, the fifth visit to Kyiv on December 7-8, 15 year was devoted to solving the issue of the resignation of Hunter Biden 7 due to the case of N.Zlachevsky and Hunter Biden 8. ", "... the mechanism of receipt of 900 thousand dollars by Joe Biden seniors through a lobbying company, according to Ukrainian investigators,

is described.", "This is the transfer of money from Burizma Group to lobbying activities, according to the investigation, by Joe Biden personally through a lobbying company. Money in the amount of 900,000 dollars was transferred to the account of the American company "Rosemont Seneca Partners" ..." which is unreliable and violates the right to inviolability of the business reputation of BURISMA HOLDINGS LIMITED (BURISMA HOLDINGS LIMITED).

Oblige People's Deputy of Ukraine Derkach A.L., LLC "Information Agency "Interfax-Ukraine" within a period of no later than seven calendar days from the date of entry into force of the court's decision in this case to refute the unreliable information contained in the article "deputy Derkach – Burisma paid Joe Biden \$ 900 000, for lobbying activities, and \$ 16,5 million to company representatives, Kvasnevsky and Hunter Biden among them", which was distributed by the People's Deputy of Ukraine Derkach A.L., LLC "Information agency "Interfax-Ukraine" in the conference room of "Information Agency "Interfax-Ukraine", on the Internet at the link <https://ua.interfax.com.ua/news/general/617824.html> in Ukrainian, at the link <https://ua.interfax.com.ua/news/general/617824.html> in Russian, at the link <https://ua.interfax.com.ua/news/press-conference/617936.html> in English, by posting on the website <https://ua.interfax.com.ua> the operative part of this court decision, without allowing personal comments . The text of the rebuttal should be placed in Ukrainian, Russian and English under the titles "Rebuttal of the information presented in the article "deputy Derkach – Burisma paid Joe Biden \$ 900 000, for lobbying activities, and \$ 16,5 million to company representatives, Kvasnevsky and Hunter Biden among them", in the same section and in the same font , as well as the refuted information, but should not contain remarks, objections, comments, interpretations, opinions of the People's Deputy of Ukraine Derkach A.L., LLC "Information Agency "Interfax-Ukraine" and/or any other persons. Access to the rebuttal must be free and must not require entering passwords and/or codes.

Oblige People's Deputy of Ukraine Derkach A.L. within seven calendar days from the date of entry into force of the court's decision in this case to refute the false information spread by him during his speech at the press conference, which took place in the conference room of "Information Agency "Interfax-Ukraine" at 10:00 a.m., by announcement at a press conference in the conference hall of Interfax-Ukraine Information Agency LLC at 10:00 a.m. operative part of this court decision, while not allowing his own comments.

To oblige LLC "Information Agency "Interfax-Ukraine" to ensure, no later than seven calendar days from the date of entry into force of the court's decision in this case, to hold a press conference of People's Deputy of Ukraine Derkach A.L.in the conference hall of LLC "Information Agency "Interfax-Ukraine" Ukraine" at 10:00 a.m. with the aim of refuting the false information spread by him.

Oblige People's Deputy of Ukraine Derkach A.L. and LLC "Information Agency "Interfax-Ukraine" no later than seven calendar days from the date of entry into force of the court's decision in this case to remove from the web portal <https://ua.interfax.com.ua//.html> the article entitled " deputy Derkach – Burisma paid Joe Biden \$ 900 000, for lobbying activities, and \$ 16,5 million to company representatives, Kvasnevsky and Hunter Biden among them ", which is distributed to the public by a deputy of Ukraine Derkach A.L., LLC Information Agency "Interfax-Ukraine" in the conference room of "Information Agency "Interfax-Ukraine" on the Internet at the link <https://ua.interfax.com.ua//news/general/617824.html> in Ukrainian, at the link <https://ua.interfax.com.ua//news/general/617824.html> in Russian, at the link <https://ua.interfax.com.ua//news/press-conference/617936.html> in English.

The claims are based on the fact that 10.09.19 on the website of "Interfax-Ukraine Information Agency" LLC under the name: " deputy Derkach – BURISMA paid Joe Biden \$ 900 000, for lobbying activities, and \$ 16,5 million to company representatives, Kvasnevsky and Hunter Biden among them". The information specified in it was disseminated on the basis of the press conference held by People's Deputy of Ukraine DERKACH A.L., which took place in the conference room of "Information Agency "Interfax-Ukraine" at 10:00 a.m. in the conference hall of Interfax-Ukraine Information Agency LLC. The information disseminated by him is unreliable, stated in the form of factual statements, has a negative character, and its dissemination violates the integrity of the business reputation of the company BURISMA HOLDINGS LIMITED (BURISMA HOLDINGS LIMITED).

By decision of the Pechersk District Court of the city of Kyiv dated September 4, 2020, the claim was refused.

Disagreeing with the decision of the court of first instance, the representative of BURISMA HOLDINGS LIMITED (BURISMA HOLDINGS LIMITED) - lawyer G.S. Palagytska filed an appeal, in which she asks to cancel the court's decision and issue a new decision, which will satisfy the claims in full.

The appeal is based on the fact that the court of first instance incompletely established the circumstances that are important for the case, did not properly assess the evidence and incorrectly applied the rules of substantive law.

She noted that in the controversial publications and speech by the defendants, unreliable information was spread, which is presented in the form of factual statements, which has a negative character and does not correspond to reality. In order to hide the falsity of the information and artificially give it weight, Derkach A.L. refers to the materials of the pretrial investigation body, which do not exist. With none of the evidence contained in the case file, the defendants have not proven either the reality of these events or the fact that these events are confirmed by the documents of the pre-trial investigation body.

The so-called documents published by the defendants, which are contained in the case file, are not documents at all and do not confirm the authenticity of the disseminated information. The defendants have not proven either the reliability of the information about the plaintiff's payments and the impact on the closure of criminal proceedings, or that these data are materials of a pre-trial investigation. Defendant Derkach A.L.'s reference to the fact that these documents were provided to him by journalists does not give him grounds to claim that these are investigation data and, on the contrary, confirms that the latter cannot confirm the fact that these are materials of a pre-trial investigation body.

At the time of spreading the false information, there was a notice of suspicion dated 03/28/2019 in criminal proceedings No. 12013220540000400. However, it did not contain the information referred to by Derkach A.L., and indicates that he disseminated inaccurate information.

According to the pre-trial investigation body, BURISMA HOLDINGS LIMITED made payments in the total amount of 1,242,885 Euros and 3,404,712.82 US dollars, which refutes the fact that the plaintiff paid 16.5 million US dollars; the investigation data does not include 900,000 US dollars as the amount that the plaintiff allegedly transferred to the company "ROSEMONT SENECA BOHAI LLC".

There is no court decision to confirm the fact of interference of third parties in the activities of the pre-trial investigation body regarding the closure of criminal proceedings.

The court of first instance did not establish the fact of whether the contested information is investigative data. The contested decision contains only an unfounded assumption that: "the plaintiff does not dispute either the materials of the pre-trial investigation or the documents from them, which were made public by the People's Deputy of Ukraine at the press conference."

In addition, the court of first instance, without establishing the nature of the disseminated information, concluded that the disseminated information is a person's own vision. However, the specified publication contains a link to Derkach A.L. as a source of information. The presence of a reference to the person who distributed this information indicates that this information is not an inference of the author; common information is presented in the form of factual data; refutation of such information is not a limitation of the activities of journalists who perform the role of "watchdog of society".

Disagrees with the conclusion of the court of first instance that the disseminated information is torn from the context in which the analysis of the materials collected by journalists and the pre-trial investigation body was carried

out, Derkach A.L. made a critical statement, which is the person's own vision, and is also a guaranteed right to freedom of speech and expression of views .

She noted that the disseminated information is not the materials of the pre-trial investigation body, but is a complete opinion expressed in the form of factual statements, the truth of which can be checked for their compliance with reality.

The first-instance court also incorrectly established the circumstances of the case, arguing that the disseminated information did not concern the plaintiff, and therefore could not affect his business reputation. The information that "... in the materials of the criminal proceedings, the mechanism of receiving money by Joe Biden . is described", "The son of Joe Biden Hunter Biden was one of the four owners of more than 16.5 million dollars", "the mechanism of receiving 900 thousand dollars by Joe Biden senior through a lobbying company is described , according to Ukrainian investigators." concerns the interests of the plaintiff, because it is directly related to other unreliable information, with which the defendants informed about the transfer of some funds by the plaintiff.

Considers that the norms of Art. 11, part 4-5 of Art. 17 of the Law of Ukraine "On the Status of People's Deputy" could not be applied to disputed legal relations, since the plaintiff does not challenge the defendant's right to speak and express his opinion, but the unreliable information that the defendant spread about the plaintiff in the form of factual data, and not his own opinion.

In the addendum to the appeal, the plaintiff's representative noted that the disseminated information relates to specific events, presented in the form of factual data, falls under the scope of a criminal act, and is presented as an established fact. The Supreme Court in Resolution No. 727/8388/17 expressed the legal position that since the actions claimed by the defendant fall under the characteristics of a criminal act, this excludes the attribution of words about the plaintiff's activities to evaluative judgments. Thus, the veracity of the information disseminated by the defendants can and should be proven by appropriate evidence, based on the general principles of criminal proceedings, which include the presumption of innocence.

The court, in violation of Clause 3, Part 4, Article 265 of the Civil Code of Ukraine, did not give any assessment to each argument of the plaintiff and limited itself only to a formal conclusion that the information disseminated by the defendants does not concern the plaintiff, the People's Deputy of Ukraine expressed his own conclusions on issues important to society, and the court also unjustifiably pointed out the need to challenge the mythical materials of the criminal proceedings and other documents made public by the people's deputy of Ukraine.

In response to the appeal, the representative of the People's Deputy of Ukraine Derkach A.L.- lawyer O. V. Leshchenko asks to dismiss the appeal and leave the decision of the court of first instance unchanged.

He noted that the claim for recognition of the information disseminated about the plaintiff in the title and text of the article "deputy Derkach – Burisma paid Joe Biden \$ 900 000, for lobbying activities, and \$ 16,5 million to company representatives, Kvasnevsky and Hunter Biden among them", which was disseminated by People's Deputy of Ukraine Derkach A.L., LLC "Intrefax-Ukraine" and posted on the Internet on October 9, 2019, consists of quotes by Derkach A.L. and the author's conclusion articles on perceived information and materials received at the press conference, collected by pre-trial investigation bodies and journalists.

However, Derkach A.L. is not the author of the specified article, is not the author of its title, is not the owner of the site on which it was distributed, and therefore is not the proper defendant for the specified claim.

He noted that Derkach A.L. has made public the facts established by journalists within the scope of journalistic activities that the company BURISMA HOLDINGS LIMITED, the ultimate beneficiary of which is N.Zlachevsky, carried out a number of transactions involving the transfer of funds to the accounts of other legal entities controlled by the ultimate beneficiary N.Zlachevsky. Subsequently, the company BURISMA HOLDINGS LIMITED made a transaction of the specified funds in favor of the company Rosemont Seneca Bohai, LLC. In turn, Rosemont Seneca Bohai, LLC made direct payments to the personal accounts of Kvasnevsky , A.Apter , D.Archer and Hunter Biden .

This is contained in Additional Generalized Material No. 0145/2016/DSK dated 24.03.2016 of the State Financial Monitoring Service of Ukraine, which was compiled after receiving generalized materials from the financial intelligence of Cyprus and Latvia regarding the activities of non-residents, including the company BURISMA HOLDINGS LIMITED, the final the beneficiary of which at that time was N.Zlachevsky, a copy of which is included in the case file.

In the notices of suspicion dated 03/28/2019 in criminal proceedings No. 12013220540000400, it is directly indicated that the company BURISMA HOLDINGS LIMITED made direct payments from its account to the account of Kvasnevsky and A.Apter.

The facts of the existence of a legal relationship between the company BURISMA HOLDINGS LIMITED and the company Rosemont Seneca Bohai, LLC is confirmed by a copy of the printout of the flow of funds on the account No. 26500183732001, opened in AS PrivatBank (Latvia), from which later transfers were made to the account of the company Rosemont Seneca Bohai, LLC., opened at the Morgan Stanley bank and subsequently transferred to the personal accounts of D.Archer (D.Archer) and Hunter Biden (Hunter Biden).

Subsequently, the specified information from the Financial Intelligence Service of Latvia, the Republic of Cyprus and the State Financial Monitoring Service of Ukraine was used as evidence in criminal proceedings No. 4201400000000181 dated 03/27/2014.

The specified circumstances were confirmed by the Prosecutor General's Office in response to the lawyer's request No. 16/1/1-32814-14 dated 28.01.2020, according to which it was reported: "At the same time, I inform you that in the materials of criminal proceedings No. 4201400000000181 there is information from the State Financial Monitoring Service of Ukraine and its divisions financial intelligence of foreign countries, however, the specified information is information with limited access, constitutes a secret of the pre-trial investigation and is not subject to disclosure."

Therefore, the published materials are materials of a pre-trial investigation, therefore the court of first instance correctly established such circumstances, and the plaintiff's statement that he cannot challenge non-existent documents does not correspond to reality.

The plaintiff did not refute the widespread information about the payment of funds to the benefit of the persons mentioned at the press conference, but only formally stated that he had never paid money to such persons, which does not correspond to the case materials.

It notes that Derkach A.L. did not indicate that the plaintiff committed illegal, criminal activity and did not violate the presumption of innocence, and therefore any court decisions that should have indicated the presence of a criminal offense in the plaintiff's actions, the latter did not have to confirm his position give.

Derkach A.L.'s statements are exclusively about lobbying, but lobbying is not an illegal or unlawful activity under the legislation of Ukraine.

The court does not have the authority to establish the involvement, development, continuation of one piece of information from another, and the belonging of such information to the person of the plaintiff. The plaintiff asks to declare each piece of information individually unreliable, therefore the court, in compliance with the norms of substantive and procedural law, established the circumstances that part of the information does not relate to the plaintiff's identity.

The trial court summarized the reasons for the decision in the case in order to maintain a balance between brevity and correct understanding of the decision, without providing an answer to many arguments of both the plaintiff and the defendants. However, the contested decision meets the criterion of reasonableness.

LLC "Information agency Interfax-Ukraine" did not use the right to respond to the appeal.

At the court hearing, the representative of BURISMA HOLDINGS LIMITED - lawyers G. S. Palagytska, O. R. Terefenko supported the appeal and asked for it to be satisfied.

The representative of DERKACH A.L. - lawyer O. V. Leshchenko requested that the appeal be dismissed, and the decision of the court of first instance remain unchanged.

The representative of "Information Agency Interfax-Ukraine" LLC did not appear at the court session, the court duly informed about the date, time and place of hearing the case.

Having reviewed the case based on the evidence available in it, having checked the legality and reasonableness of the decision of the court of first instance within the limits of the arguments and requirements of the appeal, the court of appeal came to the conclusion that the appeal cannot be satisfied on such grounds.

Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms stipulates that everyone has the right to freedom of expression. This right includes freedom to hold opinions, receive and impart information and ideas without interference from public authorities and regardless of frontiers. The exercise of these freedoms, as it is associated with duties and responsibilities, may be subject to such formalities, conditions, restrictions or sanctions as are established by law in the interests of national security, territorial integrity or public safety, to maintain order or prevent crimes, to protect health or morals, to protect the reputation or rights of others, to prevent the disclosure of confidential information or to maintain the authority and impartiality of the court and is necessary in a democratic society.

According to the established practice of the European Court of Human Rights, freedom of expression is one of the important foundations of a democratic society and one of the basic conditions for the progress of society as a whole and the self-realization of each individual. According to paragraph 2 of Article 10 of the Convention, it covers not only "information" or "ideas" that are accepted with approval or regarded as inoffensive or neutral, but also those that may offend, shock or disturb. Such are the requirements of pluralism, tolerance and breadth of views, without which there is no "democratic society" (the decision in the case of *Karpyuk et al. v. Ukraine* dated October 6, 2015).

As stated in the decisions of the European Court of Human Rights (the cases of *Lingens*, *De Gees and Geisels*, *Goodwin*, *Prager and Oberschlick*), the freedom of expression guaranteed by paragraph 1 of Article 10 is one of the main foundations of a democratic society and one of the fundamental conditions for its development and conditions implementation of each person. Subject to paragraph

2, freedom of expression extends not only to "information" or "ideas" that are properly received or regarded as inoffensive or minor, but also to those that cause offense, outrage or disturbance. Such are the requirements of pluralism, tolerance and breadth of views, without which a "democratic society" is impossible.

Article 34 of the Constitution of Ukraine guarantees everyone the right to freedom of thought and speech, to the free expression of their views and beliefs. At the same time, according to Article 68 of the Constitution of Ukraine, everyone is obliged to strictly adhere to the Constitution and laws of Ukraine, not to encroach on the rights and freedoms, honor and dignity of other people.

Thus, the right to freedom of thought and speech, to the free expression of one's views and beliefs is accompanied by the obligation not to spread inaccurate information about a person and such information that disgraces his dignity, honor or business reputation.

In accordance with Article 32 of the Constitution of Ukraine, everyone is guaranteed judicial protection of the right to refute inaccurate information about themselves and their family members and the right to demand the removal of any information, as well as the right to compensation for material and moral damage caused by the collection, storage, use and dissemination of such information unreliable information.

Article 201 of the Civil Code of Ukraine stipulates that honor, dignity and business reputation are personal non-property goods protected by civil law.

According to Articles 297 and 299 of the Civil Code of Ukraine, everyone has the right to respect for his dignity and honor, and for the inviolability of his business reputation.

According to Art. 91 of the Civil Code of Ukraine, a legal entity is capable of having the same civil rights and obligations (civil legal capacity) as a natural person, except for those that by their nature can belong only to a person.

According to Part 1 of Art. 94 of the Civil Code of Ukraine, a legal entity has the right to the inviolability of its business reputation, to the secrecy of correspondence, to information and other personal non-property rights that may belong to it.

The business reputation of a legal entity, including business partnerships, natural persons - entrepreneurs, lawyers, notaries and other persons, means the assessment of their business, public, professional or other activities, which is carried out by such a person as a participant in public relations.

When considering cases of the specified category, the courts must keep in mind that the legal composition of the offense, the existence of which can be the basis for the satisfaction of the claim, is a set of the following circumstances: a) dissemination of information, i.e. bringing it to the attention of at least one person in any way; b) the disseminated information concerns a certain natural or legal person, i.e. the plaintiff; c) dissemination of unreliable information, that is, information that does not correspond to reality; d) dissemination of information that violates personal non-property rights, i.e. either causes damage to relevant personal non-property goods, or prevents a person from fully and timely exercising his personal non-property right.

Information that does not correspond to reality or is presented falsely, that is, contains information about events and phenomena that did not exist at all or that existed, but information about them does not correspond to reality (incomplete or distorted), is considered unreliable.

Dissemination of information should be understood as: publishing it in the press, broadcasting it on radio, television or using other mass media; dissemination on the Internet or using other means of telecommunication; statements in characteristics, statements, letters addressed to other persons; messages in public speeches, in electronic networks, as well as in another form to at least one person.

Dissemination of information is also the posting (demonstration) of posters, slogans, other works in public places, as well as the distribution among people of leaflets, which by their content or form defame the dignity, honor of a natural person or the business reputation of a natural or legal person.

The plaintiff must prove the fact that the defendant disseminated information, as well as the fact that his personal non-property rights were violated as a result.

In accordance with Article 81 of the Civil Code of Ukraine, each party must prove the circumstances that it refers to as the basis of its claims or objections, except for the cases established by this Code. Proof cannot be based on assumptions.

According to part two of Article 30 of the Law of Ukraine "On Information", evaluative judgments, with the exception of defamation, are statements that do not contain factual data, criticism, evaluation of actions, as well as statements that cannot be interpreted as containing factual data, in particular, considering the nature of the use of linguistic and stylistic tools (use of hyperbole, allegories, satire). Evaluative judgments cannot be refuted and their veracity cannot be proven.

As can be seen from the materials of the case and determined by the court, in the conference room of "Information Agency "Interfax-Ukraine" at 10 o'clock People's Deputy of Ukraine Derkach A.L. held a press conference, during which he distributed the following information:

- "... N.Zlachevsky, according to Ukrainian investigators and journalists, contacted Vice President Joe Biden and State Secretary John Kerry through a lobbying company and offered them, according to Ukrainian investigators, to share the profits of the Burizma Group gas production company.";

- "According to the data available to us, which are currently in the Ukrainian prosecutor's office, they are contained in the materials of one of the criminal cases against Burisma, and are based on the report of the financial division of the intelligence of Latvia, in favor of two offshore gasket companies and also Kvasnevsky, Apter, D.Archer and Hunter Biden Burisma company paid no less than 16.5 million dollars.";

- "The son of Joe Biden Hunter Biden was one of the four owners of more than 16.5 million dollars.";

- "This caused undisguised irritation of Hunter Biden and his fifth visit in two years, I emphasize, the fifth visit to Kyiv on December 7-8, 2015 was devoted to solving the issue of Hunter Biden's resignation due to N.Zlachevsky and Hunter Biden";

- "... the mechanism of receipt of 900 thousand dollars by Joe Biden seniors through a lobbying company is described, according to Ukrainian investigators.";

- "This is the transfer of money from Burisma Group for lobbying activities, according to the investigation, Joe Biden personally through a lobbying company. Money in the amount of 900 thousand dollars was transferred to the account of the American company "Rosemont Seneca Partners" ...".

In addition, in the conference room of "Information Agency "Interfax-Ukraine" on the website of "Interfax-Ukraine Information Agency" LLC published a publication entitled: "deputy Derkach – Burisma paid Joe Biden \$ 900 000, for lobbying activities, and \$ 16,5 million to company representatives, Kvasnevsky and Hunter Biden among them", which contained the following statements:

- "... "Burisma" paid Joe Biden \$900,000 for lobbying activities... and \$16.5 million to company representatives...";

- "The former vice president of the USA Joe Biden received \$900,000 for lobbying activities from the oil and gas company Burisma Group...";

- "... in the materials of the criminal proceedings, the mechanism of receiving money is described by Joe Biden .";

- "This is the transfer of funds from "Burisma Group" for lobbying activities, according to the investigation, to Joe Biden personally through a lobbying company.";

- "Money in the amount of \$900,000 was transferred to the account of the American company "Rosemont Seneca Partners"...";

- "According to the documents, in general for the benefit of (the former president of Poland, since 2014 is an independent director of Burisma Holdings - FI) Kvasnevsky , (chairman of the board of independent directors of "Burisma" - FI) A.Apter , (independent director of "Burisma" - FI) D.Archer and Hunter Biden (who also joined the board of directors of independent directors of "Burisma" - IF in 2014) "Burisma" paid no less than \$16.5 million" ...";

- "... using the political and economic levers of influence on the Ukrainian authorities and manipulating the issues of providing financial assistance to Ukraine, Joe Biden actively contributed to the closure of criminal cases related to the activities of the former Minister of Ecology of Ukraine N.Zlachevsky, who is the president and owner of Burisma Group. ".

Rejecting the claim, the court of first instance, in particular, assumed that the information: "The son of Joe Biden Hunter Biden was one of the four owners of more than 16.5 million dollars." according to Ukrainian investigators.", "... in the materials of the criminal proceedings, the mechanism of obtaining money is described by Joe Biden .", does not apply to the plaintiff.

Most of theses, which the plaintiff asks to be refuted, cannot be taken out of the context of the entire press conference, according to which the collected materials were analyzed by journalists and pre-trial investigation bodies, and critical statements were made on issues of public importance. These conclusions are the individual's own vision of issues important to society and are his guaranteed right to freedom of speech and expression of views on issues on socially important topics. The plaintiff, putting forward demands for the refutation of information, allows the abuse of his rights, because, interpreting the content of the information, he asks to recognize the following phrases as unreliable: "it is described in the materials of the criminal proceedings", "in the opinion of the investigation", "according to the documents", "according to the opinion of the Ukrainian investigators and journalists", "according to the Ukrainian investigators", "according to the data we have, which are currently in the Ukrainian prosecutor's office, they are contained in the materials of one of the criminal cases", "according to the investigation". The defendant Derkach A.L. is not the author of the publication (article): "

<https://ua.interfax.com.ua//news/general/617824.html>" or its title. Pulling information out of the context of the title and without taking into account the documents that confirm the specified circumstances limits the activities of journalists who play the role of "society's watchdog". The plaintiff in the statement of claim actually and does not dispute the facts of payments, but speaks of their significant differences and exaggerations.

Having reviewed the case based on the evidence available in it, the appellate court agrees with the conclusions of the court of first instance in the part that there is widespread information that: "The son of Joe Biden Hunter Biden was one of the four owners of more than 16.5 million dollars.", "... described the mechanism of obtaining 900 thousand dollars by Joe Biden senior through a lobbying company, according to Ukrainian investigators.", "... in the materials of the criminal proceedings, the mechanism of obtaining money by Joe Biden is described.", does not concern the rights and interests of the plaintiff and cannot affect his business reputation.

The appellate court also believes that as a result of the dissemination of information, namely: "Money in the amount of \$900,000 was transferred to the account of the American company "Rosemont Seneca Partners"..." ; "... using the political and economic levers of influence on the Ukrainian authorities and manipulating the issues of financial aid to Ukraine, Joe Biden actively contributed to the closure of criminal cases related to the activities of the former Minister of Ecology of Ukraine N.Zlachevsky, who is the president and owner of Burisma Group. » does not relate to the assessment of business or other activities carried out by BURISMA HOLDINGS LIMITED as a participant in public relations, and therefore there are no grounds for concluding that the plaintiff's personal non-property rights have been violated by such actions of the defendants.

The Court of Appeal does not agree with the plaintiff's arguments that the defendants' assertions that: "This is the transfer of money from Burizma Group to lobbying activities, according to the investigation, by Joe Biden personally through a lobbying company. Money in the amount of 900 thousand dollars was transferred to the account of the American company "Rosemont Seneca Partners" ..."; "... "Burisma" paid Joe Biden \$900,000 for lobbying activities... and \$16.5 million to company representatives..."; "The former vice president of the USA Joe Biden received \$900,000 for lobbying activities from the oil and gas company Burisma Group..."; "This is the transfer of funds from "Burisma Group" for lobbying activities, according to the investigation, to JOE BIDEN personally through a lobbying company."; "According to the documents, in general in favor of (the former president of Poland, since 2014 is an independent director of Burisma Holdings - FI) Kvasnevsky, (chairman of the board of independent directors of "Burisma" - FI) A.Apter, (independent director of "Burisma" - FI) D.ARCHER and Hunter Biden (who in 2014 also joined the board of directors of independent directors of "Burisma" - IF) "Burisma" paid no less than \$16.5 million" ... form a

negative opinion in society that BURISMA HOLDINGS LIMITED made illegal transfers certain sums for the benefit of certain persons, including for lobbying activities.

Given the fact that lobbying activities are not considered illegal under the legislation of Ukraine, the latter exists in various forms in all countries of the world and is a legitimate behavior aimed at supporting the adoption, change or cancellation of laws or other legal acts, in the absence of assertions about the plaintiff's illegal actions, the content of the above-mentioned statements cannot be the basis for concluding that the plaintiff was paying for illegal activities related to the corrupt promotion of certain issues.

The negative attitude contained in the specified statements does not concern the plaintiff's business reputation.

The plaintiff also did not prove that his right to inviolability of business reputation was violated as a result of the dissemination of statements about lobbying activities.

Rejecting the arguments of the appeal in the part that the specified information is directly related to other unreliable information, the appellate court proceeds from the fact that the subject of this lawsuit is recognition as unreliable and refutation of specifically defined information.

The legal opinion of the Supreme Court, set forth in the resolution dated June 5, 2019 (case No. 727/8388/17) cannot be taken into account when considering this case, since the statements of the defendants related to actions that fall under the characteristics of a criminal act.

In this case, there were no allegations that BURISMA HOLDINGS LIMITED committed criminal acts by the defendants.

The European Court of Human Rights states that a strong distinction must be made between statements that a person is only suspected of committing a certain crime and a frank admission that a person has committed it (*Bohmerv. Germany*, 54, 56, *Nestakv. Slovakia*, 88- 89). A fundamental distinction must be made between reporting that someone is only suspected of having committed a crime and a clear statement, made in the absence of a final verdict, that a person has committed a crime (*Ismoilovand Othersv. Russia*, No. 2947/06 of 24 April 2008). Whether a statement by a public official violates the principle of presumption of innocence should be determined in the context of the specific circumstances under which such a statement was made (*Daktaras v. Lithuania*). Nothing can prevent the relevant authorities from providing information about the progress of the investigation in criminal cases, since this would be contrary to the right to freedom of expression, proclaimed by Article 10 of the Convention for the Protection of

Human Rights and Fundamental Freedoms (Allenet de Ribemont v. France of February 10, 1995, p. 33, p. 38, p. 41).

In this case, the statement that: "According to the data available to us, which are currently available in the Ukrainian prosecutor's office, they are contained in the materials of one of the criminal cases against Burisma, and are based on the report of the financial division of the Latvian intelligence, in favor of two offshore gasket companies as well as Kvasnevsky, A.Apter, D.Archer and Hunter Biden Burizma company paid no less than 16.5 million dollars."; "This caused undisguised irritation to Hunter Biden and his fifth visit in two years, I emphasize, the fifth visit to Kyiv on December 7-8, 2015 was dedicated to solving the issue of Hunter Biden's resignation due to the case of N.Zlachevsky and Hunter Biden» cannot be regarded as an admission of the plaintiff's officials committing a crime that affects his personal non-property rights.

On June 2, 2016, the European Court of Human Rights passed a decision in case No. 61561/08 "Institute of Economic Reforms v. Ukraine", where, considering the issue of ensuring a balance between freedom of expression and protection of a person's reputation, noted that in accordance with paragraph 2 of Article 10 of the Convention, there is little scope for restricting political expression or debate on matters of public interest, while a high level of protection for freedom of expression will be afforded where the expression concerns a matter of public interest.

Taking into account that the disputed judgments in this case related to issues of public interest, are in fact evaluative critical judgments given the impossibility of perceiving them as statements about the commission of a specific action, the dissemination of such conclusions by the defendants should be evaluated from the point of view of socially responsible behavior of any which person before society, and the analysis of such conclusions should be carried out by society on the basis of all information obtained from various sources.

Taking into account the fact that the other arguments of the appeal are identical to the arguments of the statement of claim, which the court gave a proper assessment, the conclusions of the court of first instance are sufficiently reasoned.

The European Court of Human Rights has repeatedly indicated that the right to reasoned judgments has its roots in a more general principle embodied in the Convention, which protects a person from arbitrariness; the decision of the national court must contain reasons that are sufficient to answer the essential aspects of the party's arguments (ruiz Toria v. Spain decision, §§ 29-30). This right does not require a detailed response to each argument used by a party; moreover, it allows higher courts to simply uphold the reasons given by lower courts without repeating them (§ 2 of the Hirvisaari v. Finland judgment).

According to Art. 375 of the Civil Code of Ukraine, the appellate court leaves the appeal without satisfaction, and the court decision unchanged, if it recognizes that the court of first instance passed the court decision in compliance with the norms of substantive and procedural law.

The arguments of the appeal and the evidence available in the case file do not refute the correctness of the conclusions of the court of first instance and do not give grounds to believe that the court of first instance made a decision in violation of the norms of substantive and procedural law, therefore the panel of judges believes that the appeal should be dismissed without satisfaction, and the decision of the court of first instance is unchanged.

Guided by Articles 367, 374, 375, 381-383 of the Civil Code of Ukraine, the court

decreed:

The appeal of the representative of BURISMA HOLDINGS LIMITED (BURISMA HOLDINGS LIMITED) - the lawyer of Palagytska Hanna Sergiyivna, is dismissed.

The decision of the Pechersk District Court of the city of Kyiv dated September 4, 2020 is to be left unchanged.

The resolution enters into force from the day of its adoption, and may be appealed to the Supreme Court within thirty days from the date of the full court decision.

The full text of the court decision was compiled on March 22, 2021.

G. M. Kyrylyuk, judge-reporter

Judges: I. M. Reynart

T. A. Semenyuk