

Investigation against the Head of Special Anticorruption Prosecutor's Office: impact on NABU investigations

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Background

In late March heads of the Prosecutor General's Office and the NABU announced investigation against the SAPO head Nazar Kholodnytskyi. Investigation was opened and is conducted by the PGO with participation of the NABU detectives.

After the fact of tapping Kholodnytskyi's office became public, both officials submitted complaints against him to the Qualifications Disciplinary Commission of Prosecutors.

Evidences against him show signs of pressure on judges and subordinated prosecutors, abuse of power over subordinated prosecutors and giving them illegal requests, informing suspects about upcoming investigative activities, offering a witness to give false testimony. Consideration of disciplinary complaint against Kholodnytskyi may result in reprimand or his dismissal from office.

Below are answers to some frequent questions regarding possible impact of the case on the NABU investigations.

What will happen to NABU ongoing investigations if the SAPO Head is dismissed?

Dismissal of the SAPO head will not influence the ongoing investigation. The SAPO has now 35 prosecutors and each open investigation is already assigned to a prosecutor; moreover, most of the cases are overseen by a group of prosecutors.

According to the law, prosecutors are independent within cases they are assigned. Even a request for an undercover investigative activity does not require consent from the SAPO Head.

Cases where Kholodnytskyi himself acts as a prosecutor will not be endangered, as suspension or dismissal of the prosecutor also stops his engagement in the cases assigned to him.

Still, according to the law in some cases notifications of suspicions may be announced only by the Prosecutor General. These are the cases against Members of the Parliament, Deputy Heads of the Prosecutor General, Head or other members of the Accounting Chamber, members of the National Agency for Corruption Prevention.

Will NABU be able to open new cases without the acting SAPO Head?

According to the Code of Criminal Procedure, the case cannot be investigated without prosecutorial oversight and prosecutors for the new cases are assigned by the SAPO Head – Deputy Prosecutor General.

However, the Deputy Head of the SAPO in case of acting as the Head of the SAPO *does not automatically* receive functions of the Deputy Prosecutor General and therefore cannot appoint prosecutors for new cases.

If the SAPO Head is dismissed or suspended, two solutions for the situation are available:

- The Prosecutor General has a legal right to appoint the First Deputy Head of the SAPO to act as the Head of the SAPO and the Deputy Prosecutor General on a temporary basis. After such an appointment, the SAPO First Deputy Head will have powers to assign new investigations to prosecutors. This option is preferable to secure the SAPO from any informal influences and delays on the part of the PGO.
- According to SAPO internal regulations, in absence of the SAPO Head his managerial functions are implemented by the First Deputy Head. Without special decree from the Prosecutor General as described above, NABU cases shall be assigned to prosecutors by the Prosecutor General or the Deputy Prosecutor General. The Prosecutor General will not have a right to gain more information about NABU investigations than he has now from the registry of criminal investigations. He also will not receive any other powers over the SAPO prosecutors. The law directly prohibits the Prosecutor General from giving any instructions to the SAPO prosecutors (article 8-1 of the Law on Prosecution). Shall the Prosecutor General allow any delays in assigning new cases to the SAPO prosecutors, it will violate the Article 214 of the Code of Criminal Procedure, requiring for a case to be registered within 24 hours and assigned to the prosecutor immediately.