

QDCP failed to dismiss Kholodnytskyi, PGO stalled a criminal case against him

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Despite [acknowledgement of grave violations](#) committed by Nazar Kholodnytskyi, the head of the Specialised Anticorruption Prosecutor's Office, on July 26 the Qualification and Disciplinary Commission of Prosecutors decided that Kholodnytskyi should be brought only to disciplinary liability and reprimanded.

This means he will stay in office and continue obstructing NABU investigations.

Artem Sytnyk promised he will appeal the decision. He could appeal it in the Supreme Court, according to the Code of administrative justice following general procedure of appealing the decisions of the authorities. However, the court would not make a decision on the merits of the case, rather on the procedures, meaning that even if the court decides the QDCP violated any procedures, the case will anyway be returned back to the Commission for re-examination.

Moreover, in practice the process of appealing in the court is complicated and time-consuming. Also, there is a negative practice in the Supreme Court that prohibits complainants in the disciplinary cases to appeal to the court at all, though this directly violates the Constitution, the Code of administrative justice and the right to a fair trial.

QDCP decision can also be appealed at the High Council of Justice, according to the law on prosecutor's office. Nevertheless, there is a big disadvantage of such an approach. Article 78 of the law on prosecutor's office requires complainants to get a permission from the QDCP to appeal their decisions in the HCJ.

However, there is still a criminal case regarding Kholodnytskyi's actions, opened and investigated by the PGO. The criminal proceeding, in the course of which Kholodnytskyi was wiretapped, was opened regarding possible receiving of illegal benefit (bribe – Part 4, Article 368 of the Criminal Code) and possible illicit enrichment (Part 3, Article 368-2).

However, because Kholodnytskyi has detected wiretapping devices, he has not committed planned abuses, while preliminary incriminated crime requires the fact of receiving a benefit.

At the same time, there are following notions in the Criminal Code as “preparing for a crime” and “attempt to commit a crime”. They apply when intentions of the offender and preparation for the crime are established, but the offence was not completed due to circumstances beyond offender's control (Article 14 and 15 of the Criminal Code). The responsibility foreseen is the same as for committing the crime. However, as it follows from a decree, published in May, regarding this criminal proceeding, this is not considered by the PGO investigators as a way to bring Kholodnytskyi to justice.

In addition, there are two more episodes that were opened after receiving the results of wiretapping:

1) *misleading the investigation* (Article 384) concerns the episode when Kholodnytskyi instructed his friend Kaftya how to testify in Suprun's case. The crime does not presuppose any material consequences. Nobody received corresponding notices of suspicions.

2) *disclosure of the pre-trial investigation materials* (Part 1, Article 387 of the Criminal Code of Ukraine) concerns episodes of Suprun's and MP Logvynskyi's cases. As for this crime, Kholodnytskyi is defending himself as he was the procedural leader in these cases. Therefore he allegedly had the right to inform the subjects at his discretion, even if investigators think this contradicted the interests of investigation. Such a stance is obviously an obstacle to bring him to criminal responsibility for this episode.

Simultaneously, for unknown reasons PGO investigators are not investigating the episode on the *influence of Kholodnytskyi and Kryvenko on the court*. In particular, when Kholodnytskyi discovered that detectives and prosecutors had agreed on a number of searches and filed a petition to the court in Suprun's case, he instructed to contact judges and ask to refuse these petitions - and this happened. Though, in the end, the court satisfied the petition, Kholodnytskyi's actions fall under Article 376 of the Criminal Code (Intervention in the activities of judicial authorities), which has a formal corpus delicti and does not require any material consequences.

The notice of suspicion in the criminal case can be signed only by the Prosecutor General Yuriy Lutsenko, who hasn't yet done this.

Should the notice be handed, the court could suspend Nazar Kholodnytskyi from office.

UPDATE OF JULY 27:

Ukrayinska Pravda [reported](#) on July 26 night that the Prosecutor General's Office prepared a notice of suspicion for Nazar Kholodnytskyi. It was dated March 31, 2018, and concerned following episodes: leakage of the information, instructions of a witness before interrogations (in Suprun's case), as well as Kholodnytskyi's influence over the court. Simultaneously, in the abovementioned decree, which was published in May and regarded an expertise appointment, the latter episode was not mentioned.

Should the notice of suspicion had been handed to Kholodnytskyi on time and he had been suspended from office, recent dumping of TOP-cases by the SAPO would have been prevented.