



## Comments Related to Legal Officer Responsibility in Iranian and Lebanese Criminal Law

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### Abstract

The lawful superior order or constituted authority order is on issues of principles of criminal law which usually studies the causes of the crime modal or the causes of legitimacy in discussing the legal element of the crime. But some authors also consider it in the subject of criminal liability. In such cases, the person performs the material acts constituting the crime, he has also an intention, but the law exempts him from punishment. The lawful superior order includes the cases which have been identified as the causes of crime modal in accordance with article 159 of the penal code.

**Key words:** *The lawful superior order, the unlawful superior order, modal causes, the Iranian criminal law, the Lebanese criminal law*

### 1. Introduction

When the crime has been realized, there is a responsibility so when we speak of the responsibility that has been realized a crime from the officer. Basically commitment a crime has the origin in the execution of illegal orders from the officer and particular emphasis of lawyers has been on this matter in a brief reference to the officer responsibility.

There have been proposed three different theories in conjunction with the official responsibility in carrying out illegal orders from lawyers:

#### 1. Section I: Obedience theory

According to this theory, based on the absolute and unquestioning obedience to the orders of higher authorities, the execution of an order, even illegal order is considered a modal factor for the official in every circumstance. For the officer is obliged to obey and execute superior orders without the right to have the discussion with orders. Theory of obedience has not been accepted by the Iranian legislator and the officer cannot perform the illegal use of the crime modal factors.

In order to do an order, it is necessary that inferior officer obey superior one and perform his order. Obviously, the main goal of discipline and obedience is the proper and uniform implementation of rules. If any



officials interpret the law in such a way so voluntarily and at its discretion in the enforcement action, it will result from the harmony of things. So the officer who is required to execute superior order to the rule of law, he must obey him, even though the execution of the order would involve committing a crime. So it is worth that officers and inferior people be obliged to obey the issued orders by their heads and if the aforesaid orders have been illegal and would have been a crime, the officers would have been cleared of liability and it is entirely the responsibility of the directors.

There are some criticisms on this opinion which there create practical problems between superior and inferior, especially in terms of moral will and the officer will be an immobilization device through the commander.

However, this theory is dangerous because it creates a sort of mandates deputy in crime between superior and inferior. The theory cannot be accepted analytically because to maintain administrative order and formulates public affairs is inevitable but we should know that someone is as inferior under the orders of his superiors who can judge as a man of a community and he has a responsibility against other counterparts. On the contrary, obedience or blind proponents believe that inferior people have not the right to be entered the issued sentence compliance measurement with the rules.

In the silence of the law, inferior people are considered innocent to obey the orders and would not blame them, it has been a dangerous system and therefore it is unacceptable as a sort of mandates deputy in the crime create between inferior and

superior. From the perspective of Islam, enjoining the good and forbidding the evil is the duty of every Muslim and the person is required to execute it if he identifies there are the necessary conditions for the implementation of this duty. In terms of jurisprudence if the agent of the world is illegal to the order and yet he wants to perform it, the perpetrator will deserve punishment. In the Iranian criminal law the officer obedience (blind) theory from the commander is not accepted as it is given adequate explanations. In accordance with article 327 of the French penal code, the obedience theory is not accepted in this system. This means that regardless of the issue of the legal authority, the officer in charge shall be known. The article provides that no misdemeanor, not a crime if death or injury is required by law and is legislative decree, according to the law and order of the competent authorities both of them are essential to ensure the quality acquitted, the verdict of the competent authorities is not only sufficient but also it should be a legal matter.

According to the draft law No. 749-66, dated October 1966 (France) to serve in the army regulations explicitly endorsed the theory is the responsibility of the officer. Article 18 of the bill requires every person to obey the law of the armed forces before the observance of discipline and regulation, the principle of the responsibility made illegal the officer in charge of the implementation of some of the matters. Thus, currently the subject of a hypothesis or theory of obedience is not a crime in the military's behavior towards civilian rule and



rejects the hypothesis, which is easier to extend the disciplinary rules.

In this line France precedent to carry out the competent authorities as illegal modal factor is not considered and high-ranking officials in the implementation of the orders of government have attempted to arrest the persons who are not subject to private correspondence (modal parameters).

In 1940 the German penal code while confirming the responsibility of the head to insist illegal order has also been mentioned to the officer responsibility for the implementation of the unlawful matter.

According to the law: Basically superior is responsible for the crimes committed under his command, the inferior who has also executed his order is as a partner in crime If he knows superior order is a general or military crime. The British government in 1944 during the military guidelines announced that superior command is not the reason to acquit on its own but given the circumstances the sentence may be considered. Belgium government in article 3 of the 1947 law on military courts jurisdiction over crimes of war Belgium provided that the acquittal is not due to superior quality but it may only be considered mitigating quality.

Precisely in the above expression it means that the system of obedience has not been accepted in this regard the reason to acquit the officer in the performance of the illegal superior order.

The aforesaid system of international criminal justice, according to the records in the case is rejected. Article 8 of the Nuremberg statute stipulates that: That the accused in accordance with the teachings of

the Government or of a superior does not relieve the responsibility of his office has its manufacturing cost, but if the court deems just under the reduced sentence up with it.

According to the aforesaid article of Nuremberg court, many defendants claim that the court has rejected obedience to superior. So basically the obedience system has not been accepted both from the perspective of civil law and international criminal law.

### **3. Section II: Officer Responsibility theory**

According to this theory, the officer has the right to examine the legality of the order, and if he deems it against to the law, he refuses to obey an illegal order because the reason to execute an illegal order is not from crime modal factors.

Failure to apply the crime of the officer in the theory of officer responsibility is exceptional and in each case requires a special legal text.

On the contrary some scholars of criminal law for inferior consider the right or legal obligation to evaluate the orders and determine its legality or not and believe that when superior wants inferior to perform the order against the law, inferior should not obey it because the obedience to superior should be such that the law is not violated and the result of the illegal act committed is not a legitimate cause. This theory is called "thinking informed the spear".

In this way that the inferior officer assesses somehow superior way informed whether its implementation will cause danger and insecurity in the discipline?

On this theory it has been delivered in such a way that if I oblige the officers to assess



the orders of a superior authority with legal texts a sense of discipline and obedience disappear and to determine the legality or lack of legality orders, we have justified with several ideas necessarily different perceptions of it. For any officials who may interpret the law to his idea and refuses from carrying out the legal orders of superior with a variety of different pretexts, especially in military where discipline is an important factor and it is undermined by the power of command and hierarchy.

Thus, in this exceptional case when the officer can use the crime modal factor that proves that according to the official in writing of his direct boss, the officer has been committed a crime. The theory of official responsibility which its result is immediately executed illegal orders with the first part of Article 159 IPC stresses that: "When by an illegal order of one of the official authorities there is a crime, a superior and an officer are sentenced to the punishment prescribed by law" is consistent. According to the explanations given about the rejection of the theory of the obedience, the officer responsibility has been adopted both in civil criminal law and international criminal law. Article 8 of the Statute of Nuremberg speech in this field and the officer responsibility is assigned in that field. However, article 8 of the Statute provides a reduction in officer responsibility if the court will observe justice. It provides: Who acts by the order of his government or superior order, he is responsible for the cause of international law provided that he has a moral choice. Government and administrative superior act cannot be a criminal abortive one.

#### **4. Section III: Compliance theory with legal aspects**

This theory is based on the separation between clearly illegal order and apparently legal one. Being clear and obvious illegal orders, according to the modal factor the crime is cancelled. Unlike this act, implementing apparent lawful orders would appear the crime modal factor.

According to this theory it should be distinguished among the orders that so clearly are against the law and the orders apparently are legal.

This means it can be concluded that the inferior officers are required to evaluate the superior orders if it is important for law enforcement to enforce it.

#### **5. Section IV: the Iranian approach to criminal law**

According to what was said in the last three opinion survey it is essential to address this issue be dealt with in the criminal law of the ideas which have been accepted. It seems that in the Iranian criminal law, according to the specific cases any of the above given ideas have been accepted with respect to given explanations.

Sometimes a legislator in accordance with the circumstances ruled the officer obedience from orders. In some cases, the officer responsibility has accepted theory and it seems that the theory determines the fundamental basis of the relationship between the commander and officer. Compliance with legal aspects considered in principle.

Article 54 of state employment act 1966 states that employee is obliged to obey the orders of the heads of his superior in the administration on provisions of laws and



regulations. If the employee or the sentence against to the laws and regulations recognize the superior authority, he is obliged to inform against the rules and regulations to the superior authority in writing.

If the superior officer after notice in writing of his command confirmed the employee is required to execute the superior illegal commands.

First, if the superior order recognizes is against the laws and regulations he should inform his idea to superior in writing.

Second, if superior approves his idea in writing, the employee will be required to implement the issued orders.

However, in the mentioned article the inferior obedience is not fully accepted from superior since the employee has the right to scrutinize the nature of the issued orders and if it is illegal orders, he has the duty to report to superior but according to the last paragraph of the article that after the formalities the employee is required to enforce illegal order of his superiors, we can realize to the reflection of the theory of obedience in the decision of the legislator.

It seems that what the legislator has decided to take this decision is the same as what is mentioned to justify the theory of obedience. Because the observance of discipline in the administration to prevent the disruption formulates enjoys so important that unusual inquiry of the officer in orders may cause consequences, especially on matters of the office.

With regard to paragraph (c) of article 11 of disciplinary regulations of the armed forces of the Islamic Republic of Iran reflects a special provision in relation to the officer compliance from the commander in military

affairs while with respect to note 2 to these regulations the principle of non-execution of orders is an illegal entity. With regard to paragraph (c) of article 11 we can deduce reflecting the idea of officer obedience from the commander in certain military circumstances with necessary formalities.

Section C of article 11 of the regulation provides: During the war and the operating conditions that employees are required to execute the commander orders, verily subjects important to recognize the orders issued against the legal rules required or the rule of law and the religious orders of the Supreme Leader of Iran, including military laws it should be notified immediately after their arguably against orders issued by the writing of the report.

If the president or commander then ordered to be communicated in writing, inferior is required to execute it and at the same time it will be reported to higher authorities and relevant authorities.

In this case the boss or manager meets the responsibilities arising from the consequences of his command.

According to the Iranian law enforcement responsibilities in the implementation of the orders are illegal. In accordance with article 159 of the penal code provides: "When a crime is committed to illegal order of one of the official authorities, superior and officer are sentenced to punishment by law ..." In terms of the mentioned article, the officer responsibility in the execution of illegal orders of his superior will be primarily realized.

The latter part of article 159 of the Islamic penal code states the wrong impression in the officer responsibility which has acted to



execute the illegal order and it seems to consider the legal aspects.

The latter part of article 159 of the penal code indicates that the officer examining the case orders into thinking that the mentioned commands are legal, begin to its execution while the legality of the orders has been wrong and actually the orders have been illegal. It may manifest the officer mistake in the legal notion of commander. In this regard, the officer believes that the issued orders although the legality of the orders has been issued by the regulatory authority and after performing it is specified, the issuing authority of order has not any legal description to insist the order. In the aforesaid article it has been referred to the impact of reasonable officer mistake in his criminal responsibility and it has expressed to the general sentence.

#### **6. Section V: the Lebanese criminal law approach**

Article 185 of the Lebanese penal code: The individual act and conducting the act according to the letter of the law or legal process issued by superiors are not considered a crime although the issued order is illegitimate; the agent is acquitted when he is not allowed to investigate and realize his legitimacy.

In this article three cases would have been acquitted:

1. While acting is in accordance with the law and based on it.
2. Or action has been taken in accordance with the law which issued from superior.
3. Action has been illegitimate for illegal order but the law does not allow to be done an investigation in its illegitimacy.

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