

Implementation of Presidential Orders: Between Legal Compliance and Requirements of Subjective Convenience

تنفيذ الأوامر الرئاسية: بين قيود المطابقة القانونية ومتطلبات الملائمة الموضوعية

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Abstract:

The concept of obedience according to Administrative Law entails the subordinate's commitment to accurately, promptly and effectively respect and implement the orders and directives of their direct or indirect superior. This functional connection is imposed in order to achieve coordination and consistency across all hierarchical administrative bodies inside the administrative organization's pyramid. What contributed to the rebirth of this theoretical trend is its alignment with the flourishing era of the "directed legitimacy" concept in the late 1950s, which formed an inseparable and well-known dual standard.

The subjective norm of superior-subordinate relationships has weakened and receded in recent years, as the principle of convenience was widely adopted in administrative work. This led to the adoption of a dual legal solution that legitimizes presidential orders while allowing for orders that violate the law, as long as they respond to public needs under specific circumstances. This has resulted in a more flexible approach to administrative work.

Keywords: administrative hierarchy, administrative legitimacy, administrative obedience, compliance control, convenience control, presidential authority, Presidential orders.

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Introduction

In the framework of contemporary administrative trends, the traditional issue regarding the scope and limits of the subordinate's implementation of the orders and directives of their administrative superior comes into light again. While the fundamental principle is the generalization of legitimacy concerning the formation and implementation of any administrative task, including presidential orders, i.e. the reference of the compliance of these orders with the texts and essence of the law in its broadest sense, aiming to ensure the stability and coherence of legal administrative positions in the state¹. However, expanding the application of this subjective constraint may cause public administration to deviate from its primary objective, which is to serve the public interest. This is especially true in cases where administrative decisions must be made beyond the boundaries of the law. Hence, there has been a renewed jurisprudential reconsideration regarding the indirect legislative recognition of such possibilities, albeit within a very narrow framework and under the scrutiny of the administrative judge. This is to ensure the presence of a genuine objective justification allowing the administrative head to issue orders that deviate from the law².

Despite the significant attractiveness of this legal solution, especially due to its considerable flexibility allowing for the issuance of effective and suitable presidential orders that accommodate the increasing and diverse realistic situations, it places a very heavy burden on the presidential and custodial supervisory bodies on the one hand, and on both the judicial and quasi-judicial bodies on the other hand. It imposes to all these bodies the task of balancing several 'complex legal coordinates,' including ensuring the proper application of the law in its broad sense, fulfilling the requirements of the public interest despite the difficulty of adapting them accurately, and finally, expediting the issuance of appropriate administrative decisions to uphold the principle of the continuity and regularity of the public entity.

On the other hand, an administrative subordinate is eager to follow their administrative superior's commands and directives, and implementing them correctly and successfully. They either apply them after verifying their legitimacy, or they follow the legal processes imposed on them if these presidential directives are shown to contradict legal provisions. This multifaceted and multi-party procedure is deemed as the "the top of legal quandaries in the field of administrative work" because it jeopardizes the concept of consistency and coordination between the superior and the subordinate, particularly when it comes to carrying out administrative responsibilities.

The study's source of difficulty

One of the distinguishing features of our research topic is its significant flexibility and the variety of the study viewpoints it offers. This is due to its connection with a broad administrative concept related to organizing the relationship between the administrative superior and their subordinate, especially in terms of the

implementation of presidential orders, whether legitimate ones or those in violation of the law. This explains the continued legal and judicial interest in investigating the emerging aspects of this legal issue. Even in the context of the general presentation of the topic, we believe it is challenging to hastily issue definitive legal solutions. This is primarily due to the relationship of the current subject with the requirements of the circumstances surrounding the duty to implement presidential orders and the legal nature of the employing entity, to which both the superior and the subordinate belong. This complexity is evident, for example, when comparing the application of presidential orders in civilian administrative fields versus their counterparts in the police and military domains.

Perhaps the rapid and continuous subjective developments that aligned with the idea of establishing the legal framework for the scope and limits of implementing presidential orders raises the fundamental question of whether strict application of the law takes precedence over strict implementation of presidential orders, or the simultaneous blending of both patterns, is the most significant consideration for the administrative subordinate. All of these complicated factors highlight the true obstacles that administrative judges face in their quest to identify the legal adaptation for each administrative occurrence before attempting to construct the right legal remedy. This plainly explains why this “legal phenomenon” has retained its “original glitter” and historical significance to this day.

Significance of the study

The significance of this study lies in its attempt to broaden the legal knowledge determining the scope and boundaries of constraining administrative subordinates to the obligation of administrative obedience, as set by the legislation and the judiciary. It looks specifically into the subordinate’s discretionary authority in carrying out presidential orders. The study also stresses the dynamic nature of variables and subjective circumstances that might influence the overall adaptability of these systems. In this context, the research focuses on the commitment to hold the administrative superior responsible for evaluating and pursuing the public interest in each particular administrative problem or task. This entails the issuance of appropriate orders that may achieve this noble purpose in the merits but can contradict with the principle of legitimacy in form.

These unavoidable contradictions compel us, as scholars in the field of administrative law, to establish precise and consistent standards to facilitate the various forms of oversight on the effectiveness of these measures. This can be accomplished either within the framework of the compliance principle or within the scope of the administrative suitability principle.

Study problem

Based on the previous presentation of all the aspects of our research topic, we believe that the main issue revolves around the following:

If the general legal trend applied in the field of defining the scope and limits of administrative obedience, and more importantly, the duty to implement presidential

orders, requires definitely and conclusively the necessity of strictly constraining the subordinate to the orders of their administrative superior, without deviating from them under any circumstances. Thus; did contemporary regulatory trends in administrative activity and the imposed objective restrictions that prioritize over the narrow application of the law, particularly after the generalization of the administrative compliance principle in the field of organizing and managing public utilities, contribute to the extent necessary to shift away from traditional administrative constraints in the field of outlining the authority of presidential obedience and gradually head towards consecrating the principle of priority in achieving public interest, even if it involves issuing and implementing measures that may contradict the law.

From this fundamental question, a set of subsidiary questions arise, which can be summarized as follows:

- 1- The concept of administrative obedience in the framework of the relationship between the superior and their subordinate.
- 2- The overlap between the obligation of presidential obedience and the concept of respecting the peaceful administrative hierarchy.
- 3- The legal constraints on the powers of the administrative superior in dealing with their subordinates.
- 4- The legal standards in the field of ensuring the legitimacy of presidential orders.
- 5- The legal consequences resulting from the administrative superior's refusal to implement presidential orders.
- 6- Forms of administrative and judicial control over presidential orders legitimacy.

Study methodology

In order to comprehend all the aspects of this study, we chose to adopt a methodology that combines several scientific approaches. We have relied on the descriptive approach, especially in presenting various theoretical concepts and the subjective elements related to the essence of the research. We have also utilized the deductive approach in some occasions to deduce and derive certain scientific results through the analysis and adaptation of some currently applied legal and judicial solutions. Finally, a comparative approach is employed, given that the presented work represents a summary of legal trends applied in different systems.

Study plan

- 1- The impact of presidential authority on the concept and creation of presidential orders.
 - 1-1- The concept of presidential authority and its features
 - 1-2- The legal foundations of presidential authority
 - 2- The legal guarantees outlined to establish the legitimacy of presidential orders
 - 2-1- Objective constraints related to the drafting of presidential orders
 - 2-2- Judicial control over the legitimacy of presidential orders
- These points will be addressed as follows:

Firstly: The impact of presidential authority on the concept and creation of presidential orders

In order to grasp all the subjective elements involved in the legal adaptation of presidential orders, it is necessary to determine their exact terminological concept. This provides for a better comprehension of their conceptual scope before delving into the legal components that legal academics and administrative judges have uniformly agreed upon as a regulatory reference for developing the legal system that governs them.

We will attempt to cover all these elements through the study of the following components:

- The concept of presidential authority and its features
- The legal foundations of presidential authority

We will address these points as follows:

1. The concept of presidential authority and its features

In this section we shall attempt to define the nature of presidential authority, beginning from describing its theoretical concept to clarifying its key features.

1.1. The concept of presidential authority

Legal scholars in administrative law argue that there is a significant overlap between the terms "presidential authority" and "functional obedience," considering the former as the legal foundation for the relationship between any administrative superior and their subordinates. Meanwhile, the latter is regarded as the subjective basis that regulates the functional relationships between them³⁴. In this context, and despite the diversity of jurisprudence trends regarding the inevitability of the connection between the two terms for establishing the legal framework for the concept of presidential orders, especially in French legal doctrine⁵. However, we believe that the presidential authority, which acts as a reference for all functional legal relationships, is limited to acting as the legal-functional connection between the president and the subordinate. The subordinate is required by virtue of this relationship to comply with and follow the commands, directives, and instructions of their direct and indirect administrative superiors in order to guarantee the administrative work unity and coherence⁶ under the penalty of responsibility in its three dimensions: administrative, civil, and criminal, if applicable⁷.

And in regards of the relationship between the duties of obedience within the scope of presidential authority, one should better avoid confusion between the duty of obedience stipulated within the presidential authority and the one related to the respect for the law. In the first case, the role of presidential authority is no more than giving instructions to subordinates, which they must respect and act upon. On the other hand, in terms of the duty of obedience to the law, it is broader and may extend beyond the previous commitment, especially when it necessitates compliance with the duty of obedience of subordinates to their superiors in the public service field. This duty may also be extended to related professional ethics, such as respecting laws and regulations, practicing the profession with integrity and honesty, as well as

maintaining the dignity of the profession by respecting colleagues within the institution, including both direct and indirect administrative superiors⁸.

While this concept has acquired widespread acceptance within the French legal jurisprudence, it has been harshly opposed by the Anglo-Saxon jurisprudential assembly as a whole. This opposition originates from the legal basis of the obligation of presidential authority, which requires us to adopt a flexible and comprehensive notion capable of dealing with all objective functional scenarios that may arise. When we speak of the obedience of individuals in general to the law, this generalization compels them to adhere to and obey their superiors, whether practically or legally. As a result, the legal idea under consideration should not be limited to the practical element of carrying out instructions and directives issued by administrative superiors⁹.

On the other hand, addressing presidential authority may indicate a relationship with central administration, which is subject to the administrative hierarchy, particularly ministries and autonomous administrative entities. However, it is linked in fact to administrative decentralization, as seen in municipalities and provinces¹⁰. The hierarchical relationship between the structure of the central administrative bodies and the decentralized administrative bodies, while subject to administrative supervision because the parties involved are general legal entities, does not prevent the generalization of presidential authority in terms of monitoring the legal actions of individuals issued by these bodies. Employees in lower administrative units are not permitted to behave in conflict with the actions and decisions of their superiors in higher administrative units¹¹.

1.2. Characteristics of presidential authority

1.2.1. Presidential authority is of a general, abstract and absolute nature

Among the characteristics of presidential authority are generality and totalitarianism. The administrative president has direct power over the types of administrative control that are legally granted to him while dealing with all of his subordinates. This control involves both persons and behaviors. In other words, presidential orders are deemed binding, and obedience is mandatory, which means that the subordinate is subject to his superior in all aspects concerning the superior's acts and administrative decisions made while exercising his jurisdiction. Furthermore, the subordinate is accountable to his superior in all things concerning his personal function as a public worker in the provision of public services¹².

However; it is worth mentioning that the quality of generality and totalitarianism cannot be applied in a general and abstract manner. Some exceptions may apply, allowing the legislator to delegate authority to subordinates to issue some orders autonomously, in a preliminary and definitive way, without requiring direct consent from their immediate superiors. In such instances, the superior may not interfere to examine, alter, cancel, or even substitute the subordinate and issue decisions instead of them¹³. One of the exceptions in this regard is the limitation of the authority of the administrative president in the realm of the totalitarianism of administrative control

for certain tasks characterized by regulatory nature. This is particularly evident in the case of disciplinary investigation reports or administrative regulatory inspections in the field of public security and public health¹⁴.

1.2.2. Presidential authority is assumed and enforced by the law

Presidential oversight is distinguished by the fact that it is an assumed administrative control¹⁵, which means that it is performed with the force of law. Even in the lack of specific laws authorizing the administrative president to exert such control, it is inherent in the president's authority over their subordinates and does not require a special legal requirement. It provides extensive coverage of both persons and their behaviors. The power is total in the sense that the administrative president has the authority to overturn, amend, or replace the subordinate's decisions owing to a breach of the law or their insufficiency in the conditions under which they were made¹⁶.

1.2.3. The presidential authority is considered an extension of internal administrative control

The presidential authority in the field of administrative law is characterized by its close association with the concept of internal control. It is a structural or institutional control that takes place between legal entities that possess legal personality, such as the control of ministries over their affiliated administrative facilities. However, it may refer to the concept of entities when the scope of control is limited to natural persons, namely the superior and the subordinates. It is an assumed legal control that is applied automatically without the need for an explicitly approved text, and its sole objective basis is the existence of an administrative hierarchy involving subordination and submission¹⁷. As for the temporal aspect, it is a control that can be implemented at different times; hence it is referred to as prior control, subsequent control, and continuous control¹⁸.

In this regard, it is worth mentioning that presidential authority applies to all subordinate employees under the authority of the administrative president, except for those specifically exempted by a special legal provision. For example, if the law grants exclusive competence to a specific employee in a particular matter, the administrative president is not allowed to interfere with the exercise of that employee's competence¹⁹. Similarly, the law may grant the subordinate employee specific jurisdiction while subjecting their decisions to the control of the administrative president. In this case, the administrative president is allowed to review, modify, revoke, or withdraw the actions of the subordinate. However, the administrative president does not have the right to substitute the subordinate in exercising this jurisdiction preliminarily. They must wait for the subordinate to perform their duties before exercising their oversight²⁰.

2. Legal foundations of presidential authority

The presidential authority in the field of implementing orders issued by the administrative president is based on the duty of administrative obedience in the relationship between the parties of the general administration. According to this duty,

the subordinate is required to execute the orders issued to them by their superior within the administrative unit. This is due to the authority that the president has over their subordinates, an authority based on their responsibility for the actions of their subordinates. The subordinate who accepts membership in the administrative organization must adhere to the rules of this organization, including accepting the authority of their superiors in issuing decisions²¹. Any violation of this duty or refusal to comply with it places them in a position of non-compliance or rebellion against the legal provisions that were previously accepted, which may lead them to a disciplinary questioning²².

In this regard, we note that this professional commitment is strongly linked to several legal foundations, the most important of which are:

2.1. The presidential authority derives its binding power from its connection with the authority of the state itself

The presidential authority is linked to the hierarchical principle of administrative positions, where administrative activities are distributed across various degrees of rank, importance, and responsibilities. The hierarchical structure emphasizes the need for a continuous connection between different job positions, with each position being directly connected to the one that follows it. This connection imposes a continuous independency and submission. Therefore, the administrative authority represents a distinct power through which the state acts. The authority granted to the administrative president is derived from their representation of the state, and obedience to them is obedience to the state, the law, and the public order within it²³.

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2.2. Presidential authority is imposed by ethics of the public function

When we refer to the ethical foundation of presidential authority, we find that it is linked to the requirements and ethics of the public function. The duty of obedience has objective foundations that derive from the rules and principles of ethics applicable in the public service. The duty of obedience to the presidents is based on trust in their orders and the borrowing of their competence to assume control over public facilities. Therefore, it is incumbent upon subordinates to obey the orders of their superiors, implement them, and accept their administrative authority based on personal conviction that their actions align with the ethical standards of the public service²⁵. This is the prevailing trend in our current time, where we find that as long as the administrative president possesses good character and upright behavior, the

work within the administrative institution succeeds, and all subordinates willingly and confidently follow their lead²⁶. On the other hand, we observe that the more subordinates possess good ethics and a living conscience in performing their duties, in addition to their competence, the more there is collective work that serves the efficient and high-quality management of public facilities. This is a position that is enshrined by the majority of comparative constitutions²⁷.

2.3. The presidential authority is deemed the fundamental pillar for ensuring rationality in administrative management

Most comparative legislations²⁸ agree that the administrative president is responsible for the smooth workflow of the administration under their leadership and supervision. Employees must perform the tasks requested of them and implement orders issued to them by the president in order to ensure the regularity and continuity of work within the administration. Employees should not prioritize personal preferences over the orders of the responsible president. The direct supervisor is responsible for the execution of work, and if employees were given the choice to prioritize certain tasks over others, it would lead to favoring personal interests over the public interest. This would result in chaos and disruption of the administration's proper functioning²⁹. The Supreme Administrative Court in Egypt has ruled that "one of the most important duties of an employee is to promptly execute the orders received from their superior without hesitation or refusal based on the suitability of the designated workplace or their ability to perform the assigned tasks. The distribution of tasks and determination of each employee's workplace is the responsibility of the president according to the administrative hierarchy, as they are responsible for the smooth workflow. Allowing employees to choose their tasks freely would disrupt the organizational structure and jeopardize the public interest³⁰."

Secondly: Legal guarantees outlined to establish the legitimacy of presidential orders

Due to the flexibility of presidential orders and the potential danger they may reflect when they are associated with the abuse of power by the issuing authority, which is the administrative president, it was necessary to establish prior restrictions on these orders. These restrictions, known as objective limitations, are related to the subject matter and content of these orders and the extent to which they align with the requirements of legitimacy. Additionally, there are subsequent legal solutions to evaluate any legal deviations in issuing these orders. In this case, the role of the administrative judge in overseeing the validity and safety of these measures is relevant.

We will explore these elements through the study of two fundamental concepts:

2-1- Objective limitations related to the issuance of presidential orders

2-2- Judicial oversight over the legitimacy of presidential orders

We will discuss them as follows:

1. Objective limitations related to the issuance of presidential orders

Contemporary legal experts have unanimously agreed that respecting the orders and directives of the administrative president is not absolute, but is rather subject to a set of objective restrictions related to each individual function and professional commitment. We will summarize this within the following elements:

1.1. The regulations related to the nature of the administrative system

In this regard, it is necessary for us to distinguish between the scope and boundaries of implementing presidential orders at the level of central administration and also at the level of decentralized administration, as follows:

Under the framework of central administration, which is based on unifying and bringing together administrative activities in the hands of administrative bodies existing at the capital level, especially ministries and independent administrative bodies. The nature of these administrations assumes ensuring the highest level of accuracy in implementing presidential orders in order to guarantee unity and homogeneity of administrative work. As a result, lower-level bodies are committed to the orders and directives received from higher-level bodies. What helps achieve speed in implementation is the precise determination of the functional specialization corner, where employees are distributed as superiors and subordinates in a regular administrative hierarchy, so that each subordinate is fully subject to their superior, executes their orders, and works under their supervision and guidance³¹

And therefore, we find that presidential authority in the centralized administrative system is broader in scope. This is because the president's authority extends widely over their subordinates in all matters related to the workflow of the public facility, whether it is related to the personal aspects of the subordinate or their work. All of this is attributed to the nature of the relationship between the president and the subordinate, which is governed by the principles of obedience and presidential subordination.

However, in terms of decentralized administration, it is quietly different because it is primarily based on the distribution of administrative tasks between central bodies at the capital level and regional bodies at the local level. Since the fundamental pillar of decentralized administrative organization is the existence of elected bodies, the control over these administrative units does not align with the principle of presidential control, but rather with supervisory control that is exercised between two hypothetical individuals, one centralized and the other decentralized³².

Accordingly, central bodies are not allowed to intervene in amending or canceling decisions issued by local bodies. Their role is limited to either approving or rejecting these decisions. This system is characterized by the independence of administrative bodies that have legal personality. There are also administrative councils that supervise these bodies and have independent reporting authority, while still being subject to a certain level of supervision and control by central bodies. This excludes the authority of issuing orders and directives³³.

1.2. The regulations related to the nature of the public function

The nature of public service is considered one of the most influential factors in determining the scope and boundaries of implementing and respecting presidential obedience. This, in turn, is linked to determining the extent to which presidential orders are implemented or objected to³⁴. It is important to note that the specificity of certain positions necessitates dedicating a significant level of independence to their holders, especially those in supervisory roles. This is the case for professions such as teaching, judiciary, and independent administrative bodies, including the Audit Office³⁵. On the other hand, the majority of other traditional positions in the field generally accept the principle of mandatory application of presidential orders³⁶ and adherence to administrative directives from the administrative head³⁷.

On the other hand, the nature of police and military jobs is characterized by a strong bond between the president and the subordinates. This is due to the nature of these positions, which require strict adherence to presidential military orders in order to achieve the desired goals of these jobs³⁸. Therefore, obedience in the military profession is at its highest level and strongest degree, as the strength, discipline, and cohesion among military personnel are the foundation of obedience. It is often said that "obedience is the soldier's law," as it serves as the main link in the military system³⁹.

Due to the high level of obedience required in military-related jobs, there has been a sharp jurisprudential disagreement regarding the extent of freedom for military subordinates to refuse or follow military orders that explicitly violate the law. Some argue that absolute obedience is required from subordinates in these positions, even if the orders are unlawful. Others believe that employees are not allowed to obey their superiors when it goes against the law. A third opinion suggests that obedience is required unless the order involves a clear violation of the law⁴⁰.

To avoid all these theoretical disputes that may hinder the collaborative work between the superior and the subordinate, we see the necessity of generalizing the idea of coordination between both parties and making it mandatory for the military subordinate to execute the orders issued to him by his competent superior, fulfilling all the formal and objective conditions. Any deviation from that may put him in significant trouble, especially the possibility of being accused of obstructing military activities, which is the prevailing and established direction legally and judicially at both the local and comparative levels⁴¹.

2. Judicial control over legitimacy of presidential orders

One of the most important topics related to the field of public function is the issue of judicial oversight over the practices of the administrative authority within the framework of what is known as administrative disputes. These disputes usually include four types of lawsuits: interpretation, annulment, examination of legitimacy, and finally, full judicial jurisdiction⁴². The aim of expanding the scope of this oversight is not only to ensure compliance of administrative activities with the

applicable laws and regulations but also to confirm the optimal manner in which administrative work should be carried out⁴³.

In the context of the current issue, which is presidential orders, it is necessary for them to be appropriate and in accordance with the principles of legality. These orders and directives should be issued in accordance with the law or within the scope of the law⁴⁴. In order to achieve this goal, it has been decided to subject them to judicial oversight at all levels through various forms of administrative lawsuits, including annulment, compensation, interpretation, and examination of legitimacy. This is done to uphold the rule of law, as it is considered one of the most important guarantees for protecting subordinates from the arbitrary actions of their superiors. Judicial oversight is characterized by its independence and impartiality, and the judgments of the judiciary carry the force and authority that must be implemented and respected by everyone, as affirmed by the Supreme Federal Court in the United Arab Emirates⁴⁵.

It is worth noting in this regard that judicial oversight over presidential orders involves two fundamental criteria: the formal criterion, considering whether these orders meet the formal requirements, especially in terms of issuance by the administrative president who is regionally, qualitatively and subjectively competent. Moreover, there is the objective criterion related to the principle of legitimacy, assuming the issuance of presidential orders and directives within the limits imposed by the law in its broad sense. Thus, these formal and objective conditions in the presidential order grant it the legal authority and prevent it from any administrative or judicial challenges⁴⁶.

Conclusion

In conclusion, the study manifested that the duty of a subordinate to respect the administrative orders of their superior involves a gradual obedience that is mandated by the law across different levels of hierarchy. This duty establishes a continuous and permanent presidential authority that encompasses both the subordinate themselves and the actions issued by them. It is crucial for these actions to align with the administrative directives of their immediate superior.

The basis for this submission and subordination lies in the fact that the subordinate has an allegiance and affiliation to a legally regulated administrative unit. Therefore, violating presidential orders has the potential to disrupt the entire system and hinder the requirements of the public interest.

In order to provide a comprehensive summary of the aforementioned points, we will present the results and proposed recommendations from this research as follows:

Study results

1- Presidential orders derive their subjective validity and legal power when directed to subordinates from being issued by a competent administrative authority in accordance with the law. These orders are characterized by their presumption of validity and legality, unless challenged by administrative and judicial means.

2- The duty of functional obedience entrusted to the administrative subordinate cannot be limited to written presidential orders. It is necessary to extend its application to all written and verbal presidential orders, as well as what is known as effective administrative implementation.

3- The presidential authority, as a distinct legal concept, has its own characteristics that differentiate it from other legal positions. One of its most important features is its connection to internal administrative control, which is of a general and absolute nature. Lastly, it is presumed to have the force of law.

4- The duty of obedience and subordination associated with presidential authority is supported by several fundamental pillars to ensure the smooth functioning of the public administration. One of the most important pillars is ensuring optimal administrative management, its connection to the power and authority of the state, and finally its alignment with the ethics of public function.

5- The reference of the principle of legitimacy in the field of adapting presidential orders from a legal perspective. It is considered a compelling criterion in determining the binding nature of these orders on the relevant subordinates. The absolute obligation to implement them rests with the subordinates, subject to the principle of legality.

6- The importance of the role of the administrative judge in overseeing the activities of public administration in general, as well as presidential orders in particular, lies in establishing the principle of the rule of law and preventing the administrative head from deviating in the exercise of their powers.

Recommendations

This theoretical endeavor has allowed us to highlight various shortcomings and legal gaps that will require future efforts to establish appropriate legal answers. Some of the most important recommendations in this respect are:

1- Due to the enormity of the functional burdens placed on administrative judges as a result of the variety of lawsuits they are authorized to consider, it is recommended to strengthen the role of presidential and supervisory administrative control over presidential orders for lower bodies to ensure their legitimacy of implementation.

2- I recommend the legislator to set forth new regulations that provide genuine legal protection for subordinate administrators against the arbitrary actions of their administrative superiors, particularly given the current procedural rules that give the latter a strong presumption of safety and health.

3- I recommend generalizing the direct and indirect application of administrative system so that higher administrative authorities can address difficulties that arise between lesser bodies, particularly when implementing presidential orders.⁴⁷

Margins:

¹ Chevallier (J), *l'Etat de droit*, LGDJ, Paris, 1988, P 69 – 71.

² Ibid, P 74

³ Guillien (R) et Vincent (J), *Lescique des termes juridiques*, 12^{ème} édition, Dalloz, Paris, 1999, P 79 et s.

⁴ An example of this is the definition provided by the jurist "De Laubadère," which stated: "Presidential authority is the legal competence through which the administrative president is empowered to entirely or partially annul, amend, or exempt legal acts issued by his direct subordinates.

Dé laubadère (A), *traité de droit administratif*, LGDJ, Paris, 1984, p 133 et s.

Or the definition of the Jurist "Hairiou" jurist, who said: "Presidential authority represents an internal organization for employees in ascending grades, where employees in lower grades exercise their functions, not by the direct and sole obligation to implement the law, but as much as they commit to obeying the president." See Hauriou (M), *précis de droit administratif et droit public*, 10^{ème} édition, Ed Sirey, Paris, 1921, P 274 et s.

Here, we can notice the emphasis of the jurist "Hauriou" on the element of obedience in defining the concept of presidential authority, which is a very narrow concept. While the subordinate is obligated to respect the orders of their administrative superior, they are compelled to first respect the law and prioritize its implementation. Otherwise, their actions would be deemed illegitimate.

On the other hand, the jurist "Charles Eisenmann" defined presidential authority as: "The authority exercised by the administrative president through issuing orders and decisions without being bound by the will of another administrative body. They issue them based on their personal will." He sees the legal nature of presidential authority in the discretionary power that allows the administrative president to impose their personal will on subordinates. Presidential authority includes the freedom to make decisions and the freedom to choose among several solutions, with the decision being based on the personal will of the administrative president. See Eisenmann (CH), *Cours de droit administratif*, T1, 17 edition, Paris, 2013, P 87 et s.

We consider this definition to have given the discretionary authority an exaggerated scope in defining administrative authority. It is likely that the scope and limits of presidential authority, even if its reference is the discretionary authority of the administrative president, are not absolute, but rather must be in accordance with the legal text or in accordance with the spirit of the law in the case of any gaps that require personal judgments by the administrative president.

⁶ Mohamed Abdel Hamid Abu Zeid, *Obedience to Presidents and the Principle of Legitimacy: A Comparative Study*, Dar Al-Nahda Al-Arabia, Cairo, 1988, p. 40. (in Arabic)

See also Duguit (L), *L'État, les gouvernants et les agents*, Fontemoing, Paris, Dalloz, 2005, P 625.

⁷ Sulaiman Mohammed Al-Tamawi, *Disciplinary Jurisdiction: A Comparative Study*, Dar Al-Fikr Al-Arabi, 1979, p. 124. (in Arabic)

⁸ Sterett, Susan, Christopher F. Edley, and Cass R. Sunstein. "Administrative Law and Public Administration." *Public Administration Review* 51, no. 3 (May 1991), University of Georgia USA, 281 P.

⁹ Ibid, P 283.

¹⁰ Contrary to what is established within jurisprudence, legislation and judiciary in France, regarding the distinction between the scope of presidential oversight and supervisory oversight, where the former must be applied in the field of professional relationships between the president and the subordinate as natural persons, and in contrast, the supervisory oversight should be applied between two legal entities, one being a central administration and the other being a decentralized administration, as is the case in the oversight of the ministry or government over the activities of regional entities, namely municipalities and states. Nevertheless, this objective distinction between them seems to be fragile in Anglo-Saxon countries, particularly in the United States, where the prevailing trend in the field of administrative oversight is to generalize the direct application of presidential oversight to all state entities and facilities. The coherence of this legal solution is

justified in the nature of the constitutional system in the state, which is a presidential system. Kevin (Y – T), *The Presidential Systems*, Oxford University Press, 2023, pp. 53–72.

¹¹ Ibid, P 287.

¹² Mohamed Djawdet El-Melt, "Disciplinary Responsibility of the Public Employee: A Doctoral Thesis," Faculty of Law, Cairo University, 1967, p. 104. (in Arabic).

¹³ Robert Catherine et Guy Thuillier, "De l'obéissance », in *Mélanges en l'honneur du professeur Michel Stassinopoulos*", LGDJ, Paris, 1974, p. 585.

¹⁴ Ali Gomaa Mohareb, "Administrative Discipline in Public Service: A Comparative Study," University Press Alexandria, 2015, p. 140. (in Arabic)

¹⁵ For further reading, refer to Mohamed Ahmed El-Tayeb Hekal, "Presidential Authority between Effectiveness and Guarantee: A Comparative Study between Administrative Law and Public Administration Science," Doctoral Thesis, Faculty of Law, Ain Shams University, 1983, p. 285. Also, Tharwat Badawi, "The Gradation of Administrative Decisions and the Principle of Legitimacy," Al-Ahram Publishing House, Cairo, 1968, p. 336. (in Arabic)

¹⁶ This was confirmed by the Supreme Administrative Court in Iraq The Administrative Supreme Court in Iraq confirmed during the review and deliberation process that the cassation appeal was submitted within the legal timeframe. Thus, the appeal was admissible in form. Upon careful examination of the cassation judgment, it was found that it inaccurate and in violation of the law. The appellant (the one appealed against) filed an appeal against the university order numbered (6293) on 28/2/2018, which included his punishment with a warning. The court ruled to cancel the penalty, stating that the disciplinary investigation did not demonstrate the extent of the appellant's responsibility.

The Administrative Supreme Court noted that the appellant was the director of the legal department in the respondent's department, in addition to his position. He had ordered the dismissal of a lawsuit based on an oral directive from the university president, following a letter from the engineering affairs department. Considering that the duty of obedience to superiors is not absolute, and the appellant, as the legal director, should have realized the consequences of dismissing the lawsuit based on Article 4, Clause 3 of Law No. 14 of 1991 on the Discipline of State Employees and the Public Sector, which requires employees to respect their superiors, observe etiquette in addressing them, and obey their orders related to performing duties within the limits of laws, regulations, and instructions.

Since the appellant did not adhere to this duty, he placed himself under the responsibility. As the Employee Judiciary Court issued its cassation decision without noting these considerations, the cassation judgment was deemed inaccurate. Therefore, it was decided to annul it and return the case to the mentioned court for further proceedings and issue a decision in light of the presented facts. The cassation ruling remains part of its outcome, and the decision was issued by the majority on 21/Shawwal/1442 AH, corresponding to 2/6/2021 CE." Mazen Lilo Radi, "The Subordinate's Obedience to their Superiors in the Public Service Scope," Master's thesis, College of Law, University of Babylon, 2012, p. 16. (in Arabic)

¹⁷ Bourjol (M), *droit administratif*, T2, le contrôle de l'action administrative, ED Masson, Paris, 1973, 56 P.

¹⁸ Badría Nasser, *The Scope of Presidential Authority in the Algerian Law*, Master's Thesis, Institute of Legal and Administrative Sciences, University Center, Dr. Moulay Tahar, Algeria, 2009, p. 143. (in Arabic)

¹⁹ Maryse Deguerge, "Autorité hiérarchique et responsabilité du fait des agents publics", *Revue Lamy Droit civil*, juillet-août 2008, p. 44.

²⁰ Asem Ahmed Ajila, *The Duty of Obedience in Public Service*, PhD Thesis, Faculty of Law, Cairo University, 1980, p. 42. (in Arabic)

²¹ ([CE Ass., 3 novembre 1999](#), requête numéro 207434, [Didier](#), préc. . Voir également : [CE, 2 novembre 2005](#), requête numéro 271202, [Société banque privée Fideuram Wargny](#) ; [CE, 6 janvier 2006](#), requête numéro 279596, [Société Lebanese communication group](#)).

²² Nawar Najib Tawfiq Al-Abadi, *Obedience to Unlawful Administrative Decisions by Presidents*, Comparative Study, 1st edition, National Center for Legal Publications, Cairo, 2019, p. 27. (in Arabic)

²³ Burdeau (G), *l'Etat*, Ed seuil, Paris, 1970, 196 – 197.

²⁴ Burdeau (G), *l'Etat*, Ed seuil, Paris, 1970, 196 – 197.

²⁵ Gibot-Leclerc (N.P), «droit administratif : sources, moyens, contrôles », Ed Sirey, Paris, 1995, 156 et s.

²⁶ Stanley Milgram, *La Soumission à l'autorité*, 2e éd., Paris, Calmann-Lévy, 1994, P 42.

²⁷ Article (184) of the Constitution of the Arab Republic of Egypt for the year of 2014, as amended and supplemented. Article (97) of the Constitution of the Hashemite Kingdom of Jordan for the year of 2011, as amended and supplemented. Article (88) of the Constitution of the Republic of Iraq for the year of 2005, as amended and supplemented.

²⁸ For further details in this regard, refer to Article 28 of the French Employment Law of 1983, as amended and supplemented. Article 149 of the Executive Regulations of the Egyptian Civil Service Law No. 81 of 2018. Omani Civil Service Law No. 120 of 2004, namely Article 103. Article 11 of the Saudi Arabian Civil Service System No. (M/49) of 1397 AH . Article 67 of the Human Resources Law in the Federal Government of the United Arab Emirates, No. 17 of 2016, as amended and supplemented. Article 4 of the Iraqi State Employees and Public Sector Discipline Law No. 14 of 1991, as amended and supplemented ."

²⁹ Naif bin Saeed bin Ghosn Al-Maamari, *The Commitment of the Public Employee to Obedience to Their Superiors*, Ph.D. thesis, Faculty of Law, Department of Public Law, Mansoura University, 2020, p. 71. (in Arabic)

³⁰ The decision of the Egyptian Supreme Administrative Court, Appeal No. (1029) of the year (7), in the session held on 30th November 1963. Cited by: Ahmed Rizk Riyadh in 'Presidential Authority between Privilege and Responsibility,' 1st edition, Ibrahim Al-Nahel Legal Foundation, Alexandria, 2007, p. 12. (in Arabic)

³¹ Mowbray, A. R. "Administrative guidance : a public law study." Thesis, University of Edinburgh, 123 P.

³² Déroche (H), *les mythes administratifs*, PUF, Paris, 1966, 213 P.

³³ Ibid, 214 .

³⁴ The decision of the Supreme Administrative Court in Iraq, numbered 798/Employee Judiciary/Discrimination/2019, dated April 4, 2019 (unpublished decision)

³⁵ Refer, for instance, to Article (148) of the Constitution of the Arab Republic of Egypt for the year of 2014, as amended and supplemented. Article (97) of the Constitution of the Hashemite Kingdom of Jordan for the year of 2011, as amended and supplemented. And Article (88) of the Constitution of the Republic of Iraq for the year of 2005, as amended and supplemented.

³⁷ [CE, 27 janvier 1982, requête numéro 29523, Bertin](#) (Rec., p. 37 ; AJDA 1982, p. 401, obs. SS ; D. 1982, p. 177, concl. Stirn). [CE, 14 mai 2003, requête numéro 251481, Maron](#) (JCPA 2003, comm. 1637, note Taillefait).

³⁸ "Mohamed Mahmoud El-Shahat, the legal framework of obedience to the president's order in the public service with the application on the police, PhD thesis, Faculty of Graduate Studies, Police Academy, Ain Shams University, 1995, p. 105. (in Arabic) This is also affirmed by the Egyptian Military Jurisdiction Law No. 25 of 1966, as amended and supplemented on May 23, 2007, through Article 151, which states: '...Anyone subject to the provisions of this law who commits the

following crimes shall be punished by death or a lesser penalty as provided for in this law: failure to obey a lawful order issued to him by his superior while performing his duty in a manner that shows deliberate refusal of authority, whether this order was issued orally, in writing, by gesture, or otherwise, or inciting others to do so...' On the other hand, Article 42 of the Iraqi Military Penal Code No. 19 of 2007, as amended, states: '...Anyone who fails to obey an order related to his duties due to negligence, by not executing the order according to the rules, changing it, or exceeding its limits, shall be punished with imprisonment for a period not exceeding three months. The punishment shall be imprisonment for a period not exceeding six months if this crime is repeated...'"

³⁹ Green, Andrew. *Administrative law*. Toronto: Faculty of Law, University of Toronto, 2012, 112 – 114.

⁴⁰ Craig, P. P., "Administrative law", 2nd ed. London: Sweet & Maxwell, 1989, 87 – 88.

⁴¹ Mohamed Mahmoud El-Shahat, *Op. Cit.*, p108. Ashour Suleiman Shuail, *Obedience to Presidential Orders and the Criminal and Disciplinary Responsibility of the President and Subordinates*, 1st edition, Alexandria Library, Egyp, p. 52. (in Arabic)

⁴² [CE, 18 octobre 2000, requête numéro 208168, Terrail](#) (Rec., p. 430 ; AJDA 2001, p. 288, note Rouault ; JCP G 2001, IV, comm. 2333, obs. Rouault ; JCP G 2002, II, comm. 10011, note Lanov ; RFDA 2000, p. 1368).

⁴³ For further information about this issue, refer to: Ali Khatir Shantawi, *Judicial Controls Imposed by the Supreme Court on the Exercise of Administrative Discretionary Powers*, *Studies Journal*, Volume 26, Number 1, Jordan, May 1999, p. 7 and beyond. (in Arabic)

Refer as well to Charles Debbasch, *la fonction administrative en Europe*, Ed Sirey, Paris, 1981, P 11 et S.

⁴⁴ Refer to the judgment of the Iraqi Supreme Administrative Court in which it was stated: "Upon scrutiny and deliberation by the Supreme Administrative Court, it was found that the cassation appeal was submitted within the legal timeframe. Thus, it was accepted in form . Upon closer examination of the cassation judgment, it was found to be accurate and in accordance with the law. The appellant appealed against Order No. (2008) dated 2012/12/10, which imposed the penalty of salary reduction for a period of (one year) for his refusal to perform his official duties. It was established through the investigation conducted by the investigative committee formed by Order No. (1302) on 2012/8/5 that the appellant has refrained from performing his job duties since 2012/4/19, claiming unfairness in granting him the job grade he deserves. His action constitutes a violation of the provisions of paragraphs (1), (2), and (12) of Article (4) of Law No. (14) of 1991, amended, governing the state employees in the public sector. The law obligates the employee to personally carry out his job duties, allocate all official working hours to work, and perform his job duties in accordance with the law. The imposed penalty aligns with the committed violation by the appellant, which resulted in the dismissal of his lawsuit. The Employees Judiciary Court adhered to the presented evidence and ruled in favor of inadmissibility of the lawsuit, which makes its judgment true and in compliance with the law. Therefore, it ratified the cassation judgment, dismissed the cassation appeal, and imposed court fees on the appellant. The decision was issued by agreement on 9 Dhu al-Hijjah 1436 AH, corresponding to 2015/9/23. The judgment of the Iraqi Supreme Administrative Court bears the number /286/ Employee Judiciary / Appeal / 2014, dated 2015/9/23. Cited in Asim Ahmed Ajila's *Op. Cit.*, p. 296. See also the judgment of the Egyptian Administrative Court on 1963/11/30, Year 9, p. 145, cited by Mohamed Ahmed El Tayeb Hekal, *Op. Cit.*, p. 300".

⁴⁵ Refer to appeal number 5, judicial year 5, with its verdict issued on 21/6/1978.

⁴⁶ Beermann, Jack M., "Administrative law", 3rd ed. New York, NY: Aspen Publishers, 2010, 67 – 68.