



**REVIEW ARTICLE**

**JUDICIAL CONTROL OVER ADMINISTRATIVE DECISIONS WHICH THEY ARE RELATED TO  
UPGRADE OF THE PUBLIC OFFICIALS**

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**ABSTRACT**

The extremely importance comes through promotion decisions which it is relating to public officials and its impact on society, especially the high category of employees to whom these decisions belong in the public profession. Promotion of personnel is one of the advantages of public profession. It motivates the souls and performance is better than positively reflected on management through proper management and regularity. Also on the individuals and employees through financial promotion and salary increment.

**Key words:**

Judicial, Control,  
Administrative, Violation,  
Legislator, Civil laborers.

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**INTRODUCTION**

The degree of the laws of the civil officials in the state on the text and the organization of the management authority in the promotion procedures are not only based on the seniority of the employees but also based on their efficiency, it gave the right for management to upgrade some of its employees by choice. In order to encourage those who prove the merit and efficiency of the staff, the various laws are provided for organizing of the authority for discretionary management in the promotion by choice among its employees, however, the development of the administrative judiciary in its control to general administration work and the decisions related in the employees in particular, leaving only a narrow slice for the administration to exercise its discretionary authority in promoting they see it worthy of choice<sup>1</sup>. We will discuss the provisions of Law No. (14) for the year 1978 which they are concerning the civil laborers system in the state in the current law applicable to employees the general law represents any regulation or special law of workers' organizations. Article (36) of this law taking into account the worker's fulfillment of

the requirements of filling the promoted job, the promotion shall be from the job which it is immediately preceding it. The movable worker may not be promoted until at least one year has passed since the promotion of the modern units or the transferring of the worker because of his transferring of funding for his job or if he was not among the employees of the transferred unit to the worker, who is fulfilling the required legal conditions for promotion during this year. Article (37) of the same law is amended by Law No. 115 for year 1938, the promotion should be to the functions of excellent and upper grades by choice, based on date of performance evaluation and what is contained in the files of the selection elements, the promotion to other posts will be by choice within the limits of received percentages in the attached Table (1) for each financial year on its own, to start with the identified promotion.<sup>2</sup>The problem of research: Despite the importance of this subject, but the subject of judicial control has not received any attention from researchers in the field of public profession. In this research we are trying to highlight the position of the Jordanian legislator, to indicate whether the legislations authorized the function in Jordan to appeal administrative decisions relating to promotion? Who is the competent authority, the judiciary or the administrative judiciary? What is the extent or limits of this control? Does it include the test of legality of the administrative decision and

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1. Administrative law, Dr. alialdain Zaidan, Mohammad Alsayed Ahmad, Dar al fikr al Jama'h.2004(p.1142)

2 the law no: 47 for year 1978 concerning the civil workers system in the state

the availability of conditions of promotion? Does this control extend to reasons of skipping in promotion? In the promotion, the candidate must be chosen to have an excellent rank in a report for the last two years, preferably from an excellent rank in the previous year, the Competent Authority may, upon the proposal of the Personnel Affairs Committee adding controls for promotions by choice according to the circumstances and the nature of each one's activity. In all cases of promotion, it is stipulated that the worker successfully pass the training provided by the unit in which he works to agree with the Central Organization for Management and Administration. Referring to the preceding two articles, the rules must be divided for two sections the first one: It deals with the requirements imposed by the candidate for promotion and these requirements there is no discretionary authority in the administration and is limited to the candidate, the requirements of filling the position promoted to it and that the promotion from the job immediately preceding the job promoted to the class and the qualitative group and the need to get the candidate to an excellent rating for the last two years and to be promoted in accordance with the controls set by the administration.<sup>3</sup>

The Jordanian legislator has limited the jurisdiction of the Supreme Court of Justice in its present law. The court has jurisdiction over administrative disputes. The legislator has limited the court's letter to the administrative dispute to emphasize the principle of the rule of law. The administrative is an adviser and a project of the government and this function is no less important than the function of separation of disputes and therefore did not give him any advisory role in relation to the advisory opinion or legislation contrary to the position of the Egyptian legislator in the law of the Council of State.<sup>4</sup> After identifying the competent judicial review authority, namely, the Supreme Court of Justice, we will proceed in our study to the limits of judicial control over the formal and substantive conditions to file the lawsuit of cancellation, as well as pictures of appeal in administrative decisions, and finally we address the procedures for filing the cancellation's lawsuit in front of the Supreme Court of Justice

### **First: Judicial control over the formal conditions for accepting the lawsuit**

In this section, we present the formal conditions that must be met in the decision of the contested administrative promotion, the decision of the revocable promotion before the court, and the conditions relating to the filing of the suit.

#### 1- What is the decision of the promotion to be canceled

The Supreme Court of Justice defined the administrative decision as "the administrative decision is to disclose the administration's binding will with its authority under the laws and regulations with a view to effecting a certain legal effect whenever possible and permissible and motivated by a public interest."<sup>5</sup>

From the definition of the High Court of Justice we note that it requires several conditions in the decision of administrative

3 Dr. Ali Aldain Zaidan, Mohammad Alsayed Ahmad, administrative law, Dar al faker Al jamia'eh 2004 (p. 1142)

4. rule of High Court of Justice in the lawsuit no. 68/ 1970, Issued magazine in 1/1/1970.

5 rule of High Court of Justice in the lawsuit no. 132/1984 issued magazine in 1985

promotion, which accepts the appeal of cancellation of these conditions:

It must be issued by the public administration: The administrative decision is a fundamental privilege of the privileges of the general law of the administration for the purpose of achieving the public interest or the providing of public services, and therefore the decision must be issued by the central administrative authority or decentralization. The jurisprudence and the judiciary have not been considered an administrative decision and are not subject to appeal in front of the Supreme Court of Justice unless they are issued by a public administrative authority or a public figure of public law. Administrative decisions issued by public interest bodies or persons of the law against appeal are not subject to in front of the supreme Court of Justice<sup>6</sup>. There is no difference between the administrative decision issued by the General Administrative Authority explicitly or implicitly, both of which are subject to appeal in front of the courts.<sup>7</sup> The material acts of administrative decision issued by the General Administrative Authority are not expressly or implicitly subject to either of them.<sup>8</sup>

2- The administrative decision is final: This condition was (final administrative decision) is controversial in administrative jurisprudence, with some objecting to its use and suggesting of the use of the word "executive" instead it. If there is disagreement over the use of this term, there is a minimum agreement on the final meaning of the administrative decision, which is the issuance of the decision on the one hand it is authorized by the law or the system the power to decide something without the need to ratify a higher authority and this is what was taken by the Supreme Court of Justice in determining what is meant by the final administrative decision and it said "The administrative decision that accepts the appeal in front of the Supreme Court of Justice is the final decision is issued by the committee to put the organizational project into effect and the decision to deposit the project for the objecting on it is a preparatory decision is not final."<sup>9</sup> Administrative decisions in accordance with the final decision of the administrative decision shall not be regarded as preliminary or preparatory works which is preceding the issuance of the resolution or subsequent acts which do not themselves have a legal effect. The administrative decision is issued by a national public authority. The original is that the national public administration implements the laws of the country and derives its authority from it. the Jordanian Court of Justice therefore ruled that the case was not allowed which is held at one of the foreign embassies in Amman because of the lack of jurisdiction on the grounds that the embassy is part of the country protected from it, because the control of the judiciary is the national public administrations with the decisions they made.<sup>10</sup>

4- That the administrative decision binding the will of the administration and arranges legal effects:

6 Khaled Khaleel Althaher, administrative justice, Dar al matbo'at for Publishing, first edition 1999 p.168.

7 Jordanian Court of Justice no:12 for year 1992

8 Slemanaltamawi, administrative law, Cancellation Justice p.483

9 Dr. Nawaf Kana'an – Administrative law, Dar al Thakafeh for Publishing and distribution edition :2010 p.242

10 Dr. Khaled Khaleel Al thaher, administrative Justice, Dar almatbo'at for publishing first edition 1999 p.168

The administrative authority derives its decisions in a binding manner from the laws and regulations and even the decision accepts the appeal against cancellation and has implications and legal consequences, that is, the decision is effective in the status of the appellant.<sup>11</sup>

Administrative Decision is legal act:

This pillar means that the administrative decision is based on the administration's expression of its will with a view to arrange a legal effect that may be a new legal situation or an amendment or cancellation of an old legal status. Thus, the legal work of the administration about material work differs from the fact that the place of material work is always a material fact or part intended to achieve certain legal effects. The material work of the administration is often a material fact without the intention of creating a legal effect, that is, the creation of new rights and obligations. Therefore, such acts are not considered administrative decisions. Examples of material works are issued by the administration which are not legal acts. The issued order by the administration includes the investigations into the file of the plaintiff's service and the settlement of the employees according to the system of equivalence of educational certificates because the work of the administration here reveals not the origin of legal status and the material work may be the implementation of legal act such as an administrative order is issued for the arrest of a particular person, in which the administration expresses its intention and purpose and executes it as a function.<sup>12</sup>

B) The conditions relating to the person claiming the cancellation

The appellant must envisage the conditions for accepting his claim, namely the availability of interest in the lawsuit.

1-Conditions of interest in the lawsuit of cancellation

The interest shall be personal and direct :

The direct personal interest is defined as the legal situation in which the appellant is in a special legal status distinct from the other individuals and is not integrated with the interest provided by the law in the face of the persons complying with it. The contested administrative decision affects directly<sup>13</sup>, the Jordanian Court of Justice ruled that "the applicant shall have a direct self-interest whether the interest is material or literary". The interest is real, certain or probable: The interest is confirmed real in the case of a benefit from the cancellation of the administrative decision contested, whether that interest is material or literary.<sup>14</sup>The interest is possible if it is not certain in advance the abolition of the administrative decision contested the appellant will get an urgent benefit. Although it would prevent the possibility of material or literary damage or give it a chance, and this interest to justify the acceptance of the cancellation's claim should be clear and that future prejudice to the status of the appellant is likely to occur

11 Jordanian court of Justice, the decision 4/3/1997 bar association for year 1997 p.140

12 Dr. Nawaf Kan'an- administrative law – Dar althakafeh for publishing and distribution, edition 2010 p.238

13 Dr Khaled Khaleel Al thaher, administrative law, Dar almatbo'at for publishing, first edition, previous reference 1999 p.180

14 decision of High Court of Justice no.56/108

adequately and these matters are left to the judiciary.<sup>15</sup> It should be noted that the date of appeal is a basic condition that the appellant must abide it to accept his lawsuit. Article (24) of the current law of the Council of State is issued by Law No. (47) for the year (1972):

The date of filing a lawsuit in front of the court in respect of cancellation requests is sixty days from the date of publication of the of the contested administrative decision in the formal Gazette or in the publications which are issued by the public interest or the declaration of the concerned party. The date for filing the appeal shall be sixty days from the date of the expiration of the 60 mentioned days.<sup>16</sup>

## Second: Judicial supervision of the substantive conditions to accept the cancellation 's lawsuit

We will divide this subject into two requirements:

A. What is judicial control?

B. The substantive conditions to accept the cancellation 's lawsuit.

The subjecting of general administration to the law is one of the legal state elements, thus the acts of the administration are contrary to the provisions of the law. Any interested party shall have the right to request the cancellation and suspension of its implementation, as well as a request for compensation for damages caused by it. The rule of nations is no longer a right for anyone but a function which is practiced by its owner in accordance with the rules are governing it, and the authority became in the state, which it includes "legislative, executive and judicial" it Subjects to its prerogatives to the rules of law which were governing it in advance, and to achieve the rule of law requires the establishment of a competent authority to the supervisory role, that this authority has the ability to deter the administration and people when the rules of law are exceeded. I view of the functions and responsibilities of this supervisory authority, it has become the task of the judiciary for the independence of the judiciary, Integrity and impartiality.<sup>17</sup> Therefore, judicial supervision is the most effective form of supervision in order to guarantee the rights and freedoms of individuals. The countries of the world are divided on the regulation of judicial control over the work of the administration into two systems. Some states only establish one judicial body to adjudicate individual disputes. as well as administrative disputes, and this is the unified judicial system, and some states establish the administrative district next to the ordinary judiciary, administrative district specializes in adjudicating administrative disputes and this is known as the dual justice system. France is the cradle of the dual judicial system of the modern era. This type of judiciary emerged in France after the French Revolution in 1789. After the French state adopted this type of judicial organization it was followed by many countries in the world. Including Jordan, where the judicial organization in the Ottoman era was a unified organization where the ordinary courts have the power to adjudicate in all disputes by the government or are built on it. The case continued until the 1952 Constitution, which it is included basic rules are relating to many of administrative law

15 Dr Khaled Khaleel Al thaher, administrative law, Dar almatbo'at for publishing, first edition, previous reference 1999 p.181

16 Dr. Muhsen Khaleel, Dr Saed Asfora, knowledge origin p.412

17 Dr Khaled Khaleel Al thaher, administrative law, Dar almatbo'at for publishing, first edition, previous reference 1999 p.69

issues, the most important of which are: Central Administrative Organization, Local Administration, Public Service, and Public Funds.....etc.

The High Court of Justice is concerned with the affairs of public officials in the consideration in the requests by public officials to cancel final administrative decisions issued on the basis of the rule and decisions related to public functions or related to annual increase, promotion or transfer, .....etc.

The Jordanian legislator stipulated that the administrative court (Supreme Court of Justice) many of the conditions that must be met to accept the case concerning administrative decisions. These conditions, which are of interest to us in this research, should be met in the proceedings of cancellation's lawsuit which are relating in the administrative decision itself, the substantive conditions are the reasons which are leading to accept of the case or not, the revolutions in France have emerged with the efforts of the Council of State after a long historical development. The defect of lack of jurisdiction was the first of these defects, followed by a vice of form then defect of purpose, and the deviation of power, then the defect of the shop or violation of the law and finally the defect of the reason on which the administrative decision.<sup>18</sup>

We present these reasons in:

B- The substantive conditions to accept the cancellation 's lawsuit.

The defect of specialization: The idea of specialization is the result of the results of separation between authorities, It is only a matter of determining the jurisdiction for three public authorities, but also of the distribution of competencies within the same authority, and the distribution for administrative functions in the State, either on a central or decentralized basis.<sup>19</sup>The jurisdiction is, therefore, a function assigned by the legislator to a specific party to be established within the limits set for it. If it is exceeded its conduct will be null and void ,While the word "jurisdiction" in general law is the word "civil" in private law, Its rules are similar, and competence means validity and the purpose of its rules is to protect public benefit. Jurisdiction can be defined as the legal capacity that gives the public official or public authority the right to perform a particular legal act, or the legal license that gives the public official or public body the right to exercise a specific activity or act.<sup>20</sup>

#### **Vice of form and procedures :**

Is the administration's abandonment of the procedural rules that must be followed in the issuance of administrative decisions. The vice of form are undeniable in administrative decisions, as it aims to protect the public and private benefit at the same time, on the other hand, the respect of the administration of the rules of form in the guarantee for the benefit of individuals and their rights and freedoms correspond to the privileges enjoyed by the administration, such as the right of direct implementation and discretion.

And the rules of form shall either be prescribed by laws and regulations or shall be judicial rules established by the administrative judiciary to guarantee the rights of individuals.<sup>21</sup>

**Defect of the violation of the law:** It is the defect in the place of the administrative decision, and the meaning of the subject matter of the administrative decision any substance or impact.

The administration does not have the right to issue a decision that contravenes the provisions of the law, it is not intended merely to legislate any ordinary law enacted by the legislature, it means any rule of law to which the administration is committed regardless of whether the source of this rule is the Constitution or the ordinary law or whether it is a list and whether the source is codified or not. The violation of the law is not intended to be restricted by the administration is issuing a decision that wastes a specific legal rule or violates a direct violation, but the violation is realized even if it is indirect. The administration may deny that the legal rule. The interpretation of the law is not confined to the limits that the non-precise designation is intended, whether in terms of the limits of the violation or in terms of the meaning of the rule that was violate.<sup>22</sup>

**Defect of shop:** It is intended to be contrary to the administrative decision one of the legal rules. These are included the codified rules, which they are constitutional, ordinary, subsidiary or non-codified legislation derived from custom and law. A defective shop is called lawbreakers defect. This is because any defect in the administrative decision is considered to be contrary to the law in the broad sense. That the law determines the rules that are governing all the administrative decision, in terms of jurisdiction, form, location, purpose and reason.

**The defect of the shop** is one of the most important aspects of the cancellation and the most practical, and the control of the administrative judiciary on the premises of the decision is not external control as it is in the control of jurisdiction and form, but is an internal control on the essence of the resolution and its subject to reveal the conformity or violation of the law.<sup>23</sup>The Jordanian legislator called it "abuse of power" in this defect administration the man should use his discretion authority. To achieve an unrecognized purpose, the source of the decision shall be exercised the authority conferred upon it by law in the achievement of objectives other than those are specified by law. The authority is granted by the law to the administrator to carry out its work to achieve the public benefit, if he fails to do so, his decision is flawed by the abuse of authority<sup>24</sup>The defect of the reason is the factual or legal situation that led to the issuance of the administrative decision .If a decision is issued to refer a public official to the pension upon his request, the reason for this decision is the factual situation that led to his issuing the application for the pension and if it is proved that the employee did not submit a request to be referred to the pension he reason is that the decision is void and can be canceled because the reason is the factual or legal situation on which the decision is a physical or objective case

18 Dr. MajedRaghebAlhelo, administrative justice, Dar almatbo'ataljama'h p.305

19 Dr. sleman al Tamawi administrative law beginner, first book 1973, p.90

20 Dr Khaled Khaleel Al thaher, administrative law, Dar almatbo'at for publishing.first edition, previous reference 1999 p.210

21 Dr.MajedRagheb al helo, administrative justice, Dar almatbo'ataljamieh p.238

22 Dr. Mohsen Khaleel,Dr. SaedAsfora, knowledge origin p.480

23 Dr.MajedRagheb al helo, administrative justice, Dar almatbo'ataljamieh p.349

24 Dr Khaled Khaleel Al thaher, administrative law, Dar almatbo'at for publishing.first edition, previous reference 1999 p.249

prior to the issuance of the administrative decision and no matter the structure or psychological source of the decision.<sup>25</sup>

### Third: Photos of appeal against promotion decisions

If the conditions of promotion are met in the public worker, the responsibility of administration will issue a decision for promotion him, but it may not issue that decision or issue a decision to upgrade his membership and beyond him, then he has any appeal before the administrative judiciary. The general principle is that the appeal against cancellation in any administrative decision does not entail the suspension of its execution until it is annulled,<sup>26</sup> because the judge may rule on the rejection of the case if the legitimacy of the decision is realized or the administrative decision is annulled.<sup>27</sup> On this basis, the employee who is unjustly bypassed can appeal the decision of the administrative which does not respond to his claim to upgrade, or appealing the decision of skipping. In order to do so, we present these two conditions as follows:

#### A) Appealing against the implicit management decision:

The implied decision means that the Department shall refrain from issuing an administrative decision on the grievance filed by the concerned party (the employee), through the department he seeks to issue a new decision in its favor, knowing that the administration is not legally obliged to respond to this complaint.<sup>28</sup> If there is an employee who fulfills the conditions of promotion, and his objections are denied and he is entitled to them. However, the administration has not issued a decision for his promotion, he can lodge a complaint with the administrative authority then ask for his promotion to respond to the grievance without a response from the administration and abide by silence. Here we are in front of an administrative decision implicit, and the employee may be appeal before the administrative judiciary as scheduled. In this regard, it is noted that the administration is not obliged to respond to a complaint in the case of an implicit decision, contrary to the situation in the case of a negative administrative decision, in which the administration is legally obliged to respond to the complaint. In this respect, the Supreme Court of Justice ruled that: "The decision to upgrade a some of employees do not constitute an implicit decision is not to promote those not included in the promotion, as long as those are not included in the promotion did not apply for promotion, and that the competent administrative authority declined to take a decision to do so."<sup>29</sup> It is clear to us through the advanced judgment that the court requires that those who are not included in the decision of promotion apply for a promotion, that is, a grievance against the administrative authority, and that this party refrain from taking any decision, on the basis of that grievance. This means that the High Court of Justice has authorized the appeal of the implied decisions.

25 Dr. MuhsenKhaleel,DrSaedAsfora, knowledge origin p.488

26 DrHusnisaedAbdalwahed,Implementation of Administrative Judgments without daralnasher without year of publishing,Cairo 234,also Dr Sami Jamal AldainDisputes of public office and appeals related to officers affairs, first edition, knowledge origin,Alexandria,2005 p.213.

27Hamdi Ali Omar the authority of Judge administration in directing orders to the administration, previous reference p.30

28 Dr.Sabri Mohammad Snusi, Means of administrative activity ( general profession – general funds ) without date p.190

29Dr.Sabri Mohammad Snusi, Means of administrative activity ( general profession – general funds ) without date p.190

B – appealing against the decisions of the administration relating to skip promotion:

A part of the administrative jurisprudence considers that the cancellation of the decisions concerning promotion in the promotion includes two aspects, one negative and the other positive. The negative aspect is not to promote the employee who was overcome by the administration, and the positive side is based on promotion of the following.<sup>30</sup> The senior staff member may not be skipped during the promotion, if there is a compelling reason to make the newer employee more entitled to him, and therefore the senior staff member may be skipped if he or she does not meet the requirements of the promotion or has become precluded from promoting him, Or the most recent employee is distinguished from the adequacy reports, or the newest employee becomes more qualified because of the new qualification he or she has acquired or has become highly experienced because of his or her participation in the training programs. If the employee who has been skipped is right, he may appeal against the decision which he has made. In this case, it is assumed that the management has issued a decision to upgrade the employees and exceed one of them, even though the conditions for promotion are met and the impediments are denied the decision. But the question that arises is whether the appealing presented by the employee in relation to the decision that he passed is on the negative side or the positive side? The answer to this question has a significant impact on the judgment of the Supreme Court of Justice, as it accepts the appealing of positive decisions without negative, and therefore, we must address the appealing in the positive part and then appeal the negative part of the decision to upgrade, as follows:

#### 1-Appealing in the positive side of the promotion decision

The appealing of the positive aspect involves a decision that amends the existing legal situation, Whether by revocation, modification or addition and this was confirmed by the French Council of State and the Supreme Court of Justice was considered that the employee appeal the decision to upgrade on the grounds that those who are included in that resolution may have exceeded it, although he or she is entitled to equal or qualified or seniority; it has been appealed by a positive decision:

"Since promotion finds its natural limit in the principle of fair that the oldest cannot be moved to the newer when they are equal in the degree of scientific adequacy and adequacy", and the removal of the rule of Article (56) of the civil service system on the case, it is not possible to exclude the applicant from the list of candidates for promotion to the third degree to conduct a trade-off between them, and then placed where it deserves in its role of promotion and order of seniority.<sup>31</sup> And in another ruling : "Al- Ijti had has decided that the ruling on annulment concerns the consideration of the appeal which the administrative decision upgrade the employee and the appellant has exceeded the appellant even though he is entitled to the promotion of the person who has been promoted; therefore, since the appellant appeals the decision to upgrade those who have been promoted to the special grade and they do not promote him even though applicable the conditions to

30 ruleof High court of Justice in lawsuit no: 422/2004, on 8/11/2004, journal, for year 2005 p.653

31 30 rule of High court of Justice in lawsuit no: 75/1993, journal, for year 1993 p2047

him more than those who have been promoted. It is a decision that accepts the appealing of revocation.<sup>32</sup>When cancellation is considered as if the decision to upgrade was not, therefore, the administration regains its authority to promote for all according to the followed laws and regulations.<sup>33</sup>In any case, the Court may not require the administration to conduct the promotion at any time, it is one of the best interests of the management alone.<sup>34</sup>The Egyptian Supreme Administrative Court confirmed this by saying: (What has been served by the contested judgment of the plaintiff's entitlement to upgrade to the fourth degree administrative).The administrative judge stands at the task of canceling of illegal administrative decision and the implementation of the requirement of this cancellation, which is competent by the administrative authority <sup>35</sup>The administration should promote the staff member who has been awarded the award when there is a vacant grade. In the absence of a vacant rank, the promoted employee's promotion shall be canceled, and here the promotion shall be as if it had not been, and in all cases it shall not be permissible for the management may recover the financial differences arising from the canceled promotion<sup>36</sup>and the administration is obliged to restore the situation to its original condition without being required to do so.<sup>37</sup>

### Appealing the negative side of the upgrade decision

In this case, the employee shall appeal the decision, which his promotion has neglected, any decision not to upgrade him, and this appeal focuses on the negative side of the decision. The negative decision is the failure of the administration to issue a specific decision, it had to issue according to laws and regulations within a certain period of time<sup>38</sup> Thus showing the difference between the negative decision that the administration is required to make and the implicit decision that it is not obliged to make it.<sup>39</sup>

### Research conclusion

The jurisprudence of the High Court of Justice, and it is not for a long time, does not permit the appeal of an issued negative decision in Non-promotion of public employee, the court had ordered the case to be dismissed for lack of jurisdiction it says: (In the case of administrative decisions, the authority shall refrain from taking a decision which it had to make according to the laws and regulations). And the phrase "should have been taken" was meant to be adopted by law or order, and the university is not obliged to promote innovation if it reaches the end of the degree it occupies, as long as the vacancy is not available and as long as the staff member may only be promoted to a vacant post, and when there is no administrative

decision to reject the promotion<sup>40</sup>In this provision, the negative decision was defined as an irrevocable decision against cancellation.

**And ruled in another ruling:** Al- Ijti had insisted that the appeal by a negative decision comes out of the jurisdiction of the Supreme Court of Justice, the appellant challenged the plaintiff not to upgrade him, so the appeal against this description is an appeal against a negative decision that falls outside the jurisdiction of the High Court of Justice, Since the payment of jurisdiction is not in the public order, and can be promoted at any stage of the proceedings, the payment of jurisdiction shall be admissible and the claim shall be in the form of a reply.<sup>41</sup>There is no doubt that this endeavor, with respect, is a matter of great consideration and criticism by all standard, which it allowed the appeal of positive promotion decisions as promotion decisions, including the promotion of employees equal to the employee, and that his appeal here focuses on eligibility, and seniority, but he was not allowed to appeal negative decisions that include the lack of promotion. Despite the fact that it has authorized the appeal of the implied decisions, which they require that the employee complain on the basis of his non-promotion and at the end of the specified period to respond to the grievance, and in case of silence of the administration, he may appeal the implicit decision of refusal or failure of the administration to issue the promotion decision? We believe that the outcome of the appeal is negative or positive is the result of trying to obtain a ruling from the judiciary to cancel the decision of promotion, including the removal of the applicant (employee),therefore there is not difference between this or that appeal and there is not pointed in distinguishing between appealing the positive decision and the negative decision and perhaps the position of this High Court of Justice or its direction refer to its old course - before the issuance of its law No. 12 for the year 1992,when it is ruled that it is not possible to appeal the negative decision of the appointment and on this basis made this conduct withdraw on the decisions of promotion. If the conduct of the Court can be justified prior to the promulgation of Law No. 12 of 1992,since there was no provision allowing the Court to extend its control over negative administrative decisions as well as its interpretation of the phrase (issued by appointment)so as to limit its competence to positive decisions issued by appointment without negative decisions.

We cannot find an excuse for the court under the current law, which is explicitly stated in Article (11) which considered negative administrative decisions administrative decisions accept appeal against cancellation before the Court, which is expressly provided in Article (11) which are considered negative administrative decisions are administrative decisions was accepted in appealing against cancellation before the court where the article came in saying: (In the case of an administrative decision, the decision is to be rejected by the decision-maker or to refrain from taking the decision. If it is to be taken under the applicable legislation. In addition, the legislator on promotion uses a term other than the one he used on the appointment. Where in the text (relating to promotion) the word "promotion" is not used. It is understood that a phrase

32 rule of High court of Justice in lawsuit no: 179/1999, on 15/11/1999, journal, for year 2000 p.653

33 Dr Anwar Arslan, administrative law broker, public profession, Dar AlnahdaAlarabia,Cairo 1997 p 243.

34 Amr Fo'adBarakat, the promotion and effect of cancellation rule,previous reference p.104-105

35 rule of High Administrative Court in appeal no: 289 for year 19,sitting 24/2/1974.

36Dr Anwar Arslan, administrative law broker, public profession, Dar AlnahdaAlarabia,Cairo 1997 p 243

37Dr.RamadanBatikh, how to implement the ruling on cancellation in the field of administrative decisions, Research published in the Journal of the State Commission, the year 43 in 4/10/1999 P.3

38 Dr. Amr Fo'adBarakat, the promotion and effect of cancellation rule,previous reference P.104

39Dr.Sabri Mohammad Snusi, Means of administrative activity ( general profession – general funds ) p.190

40 Amr Fo'adBarakat, the promotion and effect of cancellation rule,previous referenceP.105

41 rule of high Court of justice in lawsuit no: 76/1999 in 27/6/1999, journal for year2000 P. 137,its ruled in lawsuit no:179/1999, journal for year 2000 P.153 journal of bar association and its rule in lawsuit no: 259/1998, journal for year 1999 P.162

relating to promotion is more comprehensive than the word "promoted " Including positive and negative decisions.<sup>42</sup>

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