

Subject: Supreme Court overturns its decision in the case of Mitzpe Kramim – enabling retroactive authorization of the outpost on private Palestinian land

Yesh Din

Volunteers for Human Rights

Ruling in FHCA 6364/20 on Mitzpe Kramim: Supreme Court overturns its decision from 2020 – enabling retroactive authorization of outpost in the West Bank located illegally on private Palestinian lands, in blatant disregard of Palestinian property rights and international law

Yesterday, July 27, 2022, Israel's Supreme Court, with an expanded chamber of justices, [overturned its decision](#) from 2020, ruling in favor of the settlers and allowing the principle of market overt to be used in the [case of Mitzpe Kramim](#). This ruling brazenly ignores provisions of international law and creates a mechanism for retroactively legalizing thousands of illegal structures in the West Bank.

In 2018, the District Court ruled that the principle of market overt ('good faith') could be used in the case of Mitzpe Kramim to justify the retroactive authorization of illegal Israeli construction on private Palestinian land. In 2020, the Supreme Court overturned the District Court's decision, in favor of the Palestinian rights holders, ruling that the Mitzpe Kramim outpost should be demolished. Following the ruling, the State requested an additional hearing before an expanded panel of justices, who yesterday issued a ruling overturning their previous decision. Yesh Din and ACRI filed a motion to join proceedings as amicus curiae both for the appeal against the District Court's decision and the further hearing.



The implications of this ruling are substantial:

This ruling overtly indicates Israel's intentions to continue to pursue retroactive legalization of illegal Israeli construction in blatant disregard of the rights of the local Palestinian population of the West Bank. The State of Israel continues to ignore the duties bestowed upon it by IHL, as the occupying power, to protect the occupied population. Additionally, as the occupying power, Israel is prohibited from transferring the occupier's population into occupied territory.

The interpretation of the Supreme Court's majority opinion will, in practice, undoubtedly serve to fulfill the intentions of the repealed [Regularization Bill](#) from 2017. It will enable settlers, backed by the Civil Administration and other State authorities, to take over thousands of dunams of Palestinian land, leading to human rights violations on a massive scale all over the West Bank and serving as the basis for future negligent and illegal policies, which are now more likely to be given the go-ahead by the Supreme Court. **This ruling symbolizes a turning point of Israel's Supreme Court**, which, for the first time, has endorsed the forced confiscation of privately owned land, which is not required for military needs, for the sole purpose of use by Israeli civilians for the establishment of a new settlement.

Yesh Din's response:

"The opinion of the majority in the Supreme Court authorized the expropriation of private Palestinian lands in favor of the settlers, and in violation of the provisions of international law. The Supreme Court's ruling will also be used in the future as a means to take over Palestinian land and to further entrench Israeli annexation. The market overt principle is meant to be a tool that is to be used in exceptional cases. In practice, this ruling turns this principle into a measure to authorize landgrab in the Palestinian territories".

Background:

The illegal outpost of Mitzpe Kramim was established over two decades ago, on private Palestinian land, in breach of local and international law. In 2011, Palestinian rights holders from the village of Deir Jarir [petitioned](#) the Supreme Court, demanding enforcement of the law against the illegal construction taking place on their land. During the litigation, the State of Israel sought to have the outpost retroactively legalized, invoking the market overt principle - a principle which occasionally allows to strip owners of their title to a property and hand it over to parties who received it in good faith.

The principle of market overt is intended to protect individuals who purchased land based on erroneous registration. It is intended to guarantee the rights of innocent buyers who rely on the land registry in cases in which it is later discovered that a registry error resulted in property being sold by a party other than the owners. In the case of Mitzpe Kramim, Yesh Din revealed in our recent report on the case, [Bad Faith](#), that the Civil Administration allocated these lands to settlers despite the explicit knowledge that they were registered, private Palestinian lands.

[Click for the judgment from July 27, 2022](#)

[Click for details on the HCJ appeal and further hearing](#)

[Click for Yesh Din's report on the story of Mitzpe Kramim, Bad Faith](#)

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