

# National Public Prosecutor's Office

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Direct number(s)	010-496 6606
Date	13 may 2013
Reference	PL-V-1340
Subject	Letter of Dismissal

Please include date and  
our reference in your  
reply.

Please raise no more  
than one subject in your  
letter.

Dear Mr. Van Eijck,

On January 5, 2009 and on March 15, 2010 criminal charges were filed by civil parties against Lima Holding B.V. and its managing directors D. Schalekamp and D. Livnat (hereinafter: 'its managing directors'). Stated succinctly, the charges concerned involvement of Lima Holding and its managing directors in the construction in occupied territory of the Israeli barrier and an industrial site near a settlement.

Through this letter I inform you that the Public Prosecution Service has decided to not further investigate or prosecute Lima Holding B.V. and its managing directors and to dismiss their criminal cases. The following has been considered in this matter.

In 2006 images were published of a crane belonging to Lima Holding B.V. which was being used in the construction of the barrier in occupied territory. Subsequently, Lima Holding B.V. was approached and called upon by the Ministries of Foreign Affairs and Economic Affairs, after which Lima Holding made it known that it would no longer supply manned cranes for work on the barrier. The Minister of Foreign Affairs reacted by pointing out to the managing directors of Lima Holding B.V., that the barrier in occupied territory is unlawful. Furthermore, he insisted that the company would cease any involvement in the construction of the barrier in occupied territory and that it would avoid any such involvement in the future.

**[Translation from Dutch Original]**

In 2007, an article was published in the press about involvement of machinery belonging to Lima Holding B.V. in the construction of the barrier on 13 June 2007. During subsequent consultations between Lima Holding B.V. and the Ministries of Foreign Affairs and Economic Affairs, the unlawfulness of the construction of the barrier was pointed out again. In 2009 two aerial working platforms belonging to Lima Holding were observed at the construction of an industrial site near a settlement in occupied territory.

In reaction to the charges filed in 2009 and 2010, the Public Prosecution Service carried out a criminal investigation together with the National Criminal Investigation Service (presently named the National Criminal Investigation Unit). So far, this investigation has shown, *inter alia*, that Lima Holding B.V. rented out cranes and aerial working platforms which were used in the construction of the barrier and an industrial site near a settlement in occupied territory. This concerns the following specific activities:

- 1) renting out a crane that was used from 10 through 12 June 2005 in the construction of the barrier in occupied territory near Aida;
- 2) renting out a crane that was used on 27 March 2006 in the construction of the barrier in occupied territory near Qalandia;
- 3) renting out a crane that was used on 3 and 4 April 2006 in the construction of the barrier in occupied territory near Rachel's Tomb;
- 4) renting out a crane that was used on a day in the last week of June 2006 in the construction of the barrier in occupied territory near Hizma;
- 5) renting out two aerial working platforms that were used on 13 June, 2007 in the construction of the barrier in occupied territory near Al Khader;
- 6) renting out one or two aerial working platforms that were used on 27 July 2009 and on 9 September 2009 in the construction of an industrial site near the settlement Ariel in occupied territory.

The construction of the barrier and/or a settlement may be considered to be a violation of International Humanitarian Law, among which the Geneva Conventions of 1949, if, as in the aforementioned cases, this construction took place in occupied territory. This finding is supported by, *inter alia*, the Advisory Opinion of the International Court of Justice of 9 July, 2004, as adopted by the General Assembly of the United Nations. Participation in a violation of International Humanitarian Law by Dutch persons and legal entities, is a crime proscribed in article 5 of the International Crimes Act.

When making considerations with regard to a settlement according to criminal law, the Public Prosecution Service considered in the first place that a violation of article 5 of the International Crimes Act is a serious criminal offence. Persons and legal entities within the Dutch jurisdiction are required not in any way to be involved in, or contribute to, possible violations of the Geneva Conventions or other rules of International Humanitarian Law. They are also

required to take decisions of authoritative international bodies and judicial institutions such as the International Court of Justice about the status, legitimacy and consequences of the barrier extremely serious.

The Dutch Government also expressed this position during the discussions and in the letters of the Ministers of Foreign Affairs and Economic Affairs in November 2006 and September 2007 in relation to the activities which were the subject of this investigation.

Furthermore the following has been considered:

The current state of the investigation shows, taking into account the worldwide company activities of Lima Holding B.V., a limited contribution to the construction of the barrier and/or (a) settlement(s) made by the company and/or its managing directors. The investigation has only shown that cranes and/or aerial working platforms were used on the aforementioned dates. The criminal charges filed by the complainants do not mention other incidents either. It has also become clear that that (part of) the material concerned had been rented out (manned or unmanned) to third parties, which used it at the barrier. Thus, the effective involvement of Lima Holding B.V. and/or the directors was relatively minor.

It has furthermore become clear that Lima Holding B.V. has taken far-reaching steps so as to permanently terminate its activities in Israel and/or the occupied territories after the criminal charges were filed. The danger of repetition (within the Dutch jurisdiction) therefore seems to be minor.

It was also considered that Lima Holding B.V. and/or its managing directors have been affected by the consequences of the above, *inter alia*, by the searches of homes and company premises and by the (media) attention which ensues from an investigation such as the present one.

The question whether the conduct of Lima Holding B.V. and its managing directors with regard to the abovementioned activities results in a violation as described, is complex and cannot, without further investigations, be answered with certainty at this moment. Such further investigations will not be conducted.

Necessary follow-up investigations would — also given the complexity of the case — consume a significant amount of resources of the police and/or the judiciary. It has also been considered that further investigations in Israel would most probably not be possible due to lack of cooperation from the Israeli authorities.

Given the above, the Public Prosecution Service will not conduct further investigations or prosecution of Lima Holding B.V. and its two managing

directors for reasons of expediency. Their cases will be dismissed.

This decision of the Public Prosecution Service may be reconsidered on the basis of new facts and/or circumstances. I furthermore point out that an appeal can be lodged against this decision with the Court of Appeal on the basis of article 12 of the Code of Criminal Procedure.

I trust that the above provides you with sufficient information.

Yours sincerely,

A.R.E. Schram  
Public Prosecutor