

The logo for the New York City Bar, featuring the text "NEW YORK CITY BAR" in a bold, serif font, centered between two horizontal blue bars.

BARRY M. KAMINS
PRESIDENT
Phone: (212) 382-6700
Fax: (212) 768-8116
bkamins@nycbar.org

April 23, 2008

President Alexander Lukashenko
38 Karl Marx Street
Minsk 220016
Republic of Belarus

Dear Mr. President:

I write on behalf of the Association of the Bar of the City of New York ("Association") to express our concern over the continued detention and physical mistreatment of Mr. Emanuel Zeltser, an American attorney, and the detention of his assistant, Ms. Vladlena Funk, a permanent resident of the United States, in Belarus.

The Association is an independent non-governmental organization of more than 22,000 lawyers, judges, law professors and government officials. Founded in 1870, the Association has a long history of dedication to human rights, notably through its Committee on International Human Rights, which investigates and reports on human rights conditions around the world.

It has been brought to our attention that Mr. Zeltser and Ms. Funk were arrested without warning on March 12, 2008, as soon as they landed and deplaned in Minsk. They were subsequently detained. No charges were brought against them until over a week later, on March 21.

It has also been reported, to the Association's great concern, that Mr. Zeltser has suffered severe physical and mental mistreatment while in detention. It has been reported that since being detained four weeks ago, he has been repeatedly subject to beatings in jail, including direct blows to the head, and has been interrogated by the KGB Special Interrogations Unit. Most recently, Mr. Zeltser has reportedly been transferred to a state psychiatric hospital.

We also understand that Mr. Zeltser, a patient of several medical conditions, including diabetes, arthritis, heart problems, and stomach ulcer, has been denied medications critical to his health. As reported, these medicines have been withheld (even after being shown to him), despite a medical report from Mr. Zeltser's physician provided to the Belarussian authorities stating that Mr. Zeltser may not survive without the medications indicated.

We have been informed that due to his critical health condition, Mr. Zeltser has twice been taken by ambulance to an emergency room, although in neither case was he provided medical attention, as no physicians were on hand. Mr. Zeltser suffers from a severe form of arthritis, among other serious conditions, and is reportedly in constant pain without his medications. According to his Belarus-appointed lawyer, he is in increasingly precarious health.

In addition to the physical mistreatment, we understand that Mr. Zeltser has been repeatedly denied access to a U.S. consul, despite diplomatic protests filed by the United States Department of State with the Belarus Ministry of Foreign Affairs. The one visit that was granted, more than two weeks after his arrest, was reportedly held in the presence of a KGB official and thus was not confidential.

Moreover, the charge that was finally brought against Mr. Zeltser and Ms. Funk – nearly 10 days after their arrest and detention – appears to have no basis to it. As reported to the Association, the charge, without any explanation or detail, alleges that Mr. Zeltser and Ms. Funk engaged in the use of forged documents, yet apparently neither individual was carrying any paper documents while traveling and both were taken into custody immediately upon arrival in Minsk. Concerns have thus been reported that this is a fabricated charge, created to justify their unlawful detention, and that self-exiled Russian businessman Boris Berezovsky may have instigated action against Mr. Zeltser for his work on behalf of a particular client.

The City Bar is greatly concerned about the arrests and detention of Mr. Zeltser and Ms. Funk, and the reports of physical mistreatment of Mr. Zeltser. The conduct described above is inconsistent with Belarus' obligations under international agreements, including the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture and Other Inhuman or Degrading Treatment or Punishment (CAT).

First, Article 9(1) of ICCPR states that no one shall be subjected to arbitrary arrest or detention. It further states: "Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him." Further, the ICCPR specifies that anyone arrested or detained on a criminal charge should be brought "promptly before a judge" and that such person is entitled to "trial within a reasonable time or to release." See Article 9(3). Detention in custody while awaiting trial "shall not be the general rule" *Id.* (emphasis added). In addition, a detainee "shall be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful." Article 9(4).

Neither Mr. Zeltser nor Ms. Funk was informed of the reasons for arrest or the charges against them at the time of their arrest on March 12, 2008. Indeed, no charges were brought against them until almost 10 days after their arrest and detention. Nor do they appear to have been given an opportunity to challenge the lawfulness of their detention before an impartial judge. These circumstances constitute arbitrary arrest and detention of the kind prohibited by international standards.

In addition, international agreements prohibit (without permitted derogation) the kind of physical mistreatment to which Mr. Zeltser has been subject. Article 7 of the ICCPR explicitly states: "No one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment." See also Rule 31 of the United Nations Standard Minimum Rules for the Treatment of Prisoners. The ICCPR also requires that all persons deprived of their liberty be "treated with humanity and with respect for the inherent dignity of the human person." Similarly, the CAT obligates Belarus to refrain from any form of torture, defined in Article 1 as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third

person information or a confession." Additionally, Principle 21(1) of the Body of Principles for the Protection of All Persons under any form of Detention prohibits an interrogator from using the situation of a detained person to compel him to confess, to incriminate himself or to otherwise testify against another person.

The conduct described above, including the beating of Mr. Zeltser and the withholding of medication as a tool to pressure him, apparently in connection with interrogation of him, constitutes torture or cruel, inhuman, or degrading treatment, as defined in international treaties, and is strictly prohibited.

In addition, Belarus's own criminal code prohibits such treatment, establishing criminal responsibility when a person in a position of responsibility exceeds his authority and engages in violence or tormenting or humiliating treatment. See Article 167, Belarus Criminal Code. It is also a crime in Belarus to fabricate charges against a person known to be innocent. See Article 172, Belarus Criminal Code.

In light of Belarus's international obligations, we respectfully urge you to take all steps in your power to release Mr. Zeltser and Ms. Funk immediately, to allow Mr. Zeltser access to his medications, and to ensure that they are subject to no further torture or cruel or degrading treatment, including interrogation under inhumane conditions. Time is of critical importance, as we understand Mr. Zeltser's health to be in a precarious state, and we thus ask you to act at once, without any further delay.

Very truly yours,

A handwritten signature in cursive script that reads "Barry Kamins". The signature is written in black ink and is positioned above the printed name.

Barry Kamins

Cc: Ambassador Mikhail Khvostov
Embassy of the Republic of Belarus
1619 New Hampshire Avenue NW
Washington, D.C. 20009
Fax: 202-986-1805

Consulate General of the Republic of Belarus
708 Third Ave., Suite 2101
New York, NY 10017
Fax: 212-682-5491

Mr. Grigory Vasilevich
Prosecutor General
24 Intenationalnaya St.
Minsk 220050
Belarus

Paula J. Dobriansky
U.S. Under Secretary of State for Democracy and Global Affairs
U.S. Department of State
2201 C Street NW
Washington, D.C. 20520 4

Daniel Fried
Assistant Secretary, Bureau of European and Eurasian Affairs
U.S. Department of State
2201 C Street NW
Washington, D.C. 20520