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BNP Paribas Case Could Upend Global Banking Norms

By **Jonathan Polkes, Tania Matsuoka and Veronica Gordon** (April 16, 2026, 5:57 PM EDT)

Few would expect a Swiss law claim stemming from human rights abuses committed in Sudan to be decided in a Manhattan courtroom.

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Yet that's what happened earlier this year in Kashef v. BNP Paribas SA, when on Jan. 7, the U.S. District Court for the Southern District of New York certified for appeal a jury's multimillion-dollar verdict on behalf of three plaintiffs against French bank BNP Paribas.

This case raises urgent questions for global financial institutions, their counsel and other stakeholders alike.

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If the verdict is upheld on appeal, banks face a new and unpredictable liability landscape where services that are fully lawful under the law of the jurisdiction in which they are rendered can nonetheless give rise to civil liability in a U.S. courtroom, under a foreign country's law, applied by a jury without regard to the law of the sovereign that enacted it.

The implications are immediate, and could fundamentally alter the way banks assess risk, conduct due diligence, manage compliance and evaluate exposure across emerging-market portfolios.

The lawsuit was brought by Sudanese refugees who endured torture and abuse. Their suffering and profoundly sympathetic circumstances were undeniable.

Veronica Gordon

However, the plaintiffs did not allege that BNP Paribas committed any human rights violations. Instead, the plaintiffs argued that the bank's services, intended to facilitate the Sudanese government's transactions in commodities, indirectly enabled the Sudanese government to finance the violence perpetrated against the plaintiffs.

Federal law generally limits liability for violations of international law occurring abroad. Statutes like the Alien Tort Statute and the Torture Victim Protection Act restrict who can be sued in federal court and for what, with foreign corporations generally shielded from suits based on overseas conduct.

The plaintiffs' co-lead counsel acknowledged in a recent Bloomberg interview that prior attempts under such statutes have largely failed, given the high bar courts have imposed, and that the claim here was framed as a garden variety tort to avoid it.[1]

Ultimately, the court found that Swiss interests outweighed those of New York, the federal government and even Sudan, since most of the transactions occurred through BNP Paribas' Geneva branch.

So the court concluded that Swiss law governed, and the case proceeded on an accomplice liability theory under Swiss law that the plaintiffs never pled. All this despite the fact that the Swiss government wrote to the court expressly stating that what BNP Paribas did was legal under Swiss law, and that the lawsuit undermined Swiss sovereignty.

To make matters worse, by the time the verdict was rendered, no U.S. entities remained as defendants. The court decided that BNP Paribas' New York subsidiary had no role in the alleged bad acts, and at trial, after the plaintiffs rested their case in chief, the court dismissed the other U.S. subsidiary as a defendant, holding that no reasonable jury could find it liable based on the evidence presented at trial.

As a result, a jury in New York ultimately evaluated a Swiss law claim against a foreign defendant, and awarded over $20 million to three plaintiffs.

It is often said that bad facts make bad law, and this case is the poster child. This case is a runaway train that threatens to inject uncertainty into the global banking sector, chill investment and development in developing nations, and flood American courts with foreign disputes.

First, this case has the potential to fundamentally reshape how banks assess risk, making them far more cautious about supporting development in emerging markets and conflict zones to avoid the risk of liability.

Financial institutions generally depend on clear rules and predictable outcomes to make decisions. If this case is affirmed, even well-intentioned banking services within developing nations could now carry the risk of unpredictable liability.

This uncertainty could discourage banks from underwriting development in countries that desperately need it, chilling economic growth and reducing access to capital. A retreat from regions where financial support is most critical not only affects nations, but it also atrophies the potential growth of the global economy.

This case also expands the number of jurisdictions a bank and its counsel may need to consider and evaluate before completing a transaction. It is significant that the financial services that BNP provided to Sudanese entities were legal under Swiss law at the time.

If this case is affirmed, banks and their counsel could not rely on the fact that their conduct is lawful in the jurisdiction where services were rendered. They would be prudent to consider the life of any given transaction, including events that involve third parties in other countries.

From a compliance perspective, banks and their counsel would also be forced to assess third-party civil litigation risk arising from a foreign sovereign's own conduct toward its population.

Banks may have to also model this scenario and assess exposure across their existing sovereign and emerging-market portfolios.

In doing so, banks and their counsel may need to consider, for example: whether their country and

sovereign risk frameworks are broad enough to capture third-party civil litigation risk beyond Office of Foreign Assets Control, anti-money laundering and sanctions exposure; whether due diligence policies account for indirect accomplice liability theories; whether transaction-level documentation is sufficient to show that human rights risks were identified and assessed; and whether human rights risks have been integrated into enterprise-risk management at the board level.

The court's disregard for a foreign sovereign's view on its own law also sets a troubling precedent for international cooperation. If U.S. courts are seen as willing to reinterpret and apply foreign law over the objections of the government that enacted it, other nations may respond in kind, undermining the comity and mutual respect that international business and diplomacy depend on.

For banks operating across multiple jurisdictions, erosion of these principles creates material uncertainty in cross-border legal risk assessments. If U.S. courts apply their own interpretations of foreign law — no matter how the enacting sovereign interprets it — it makes it much riskier for banks to rely on local counsel opinions or regulatory approvals as definitive to assess litigation exposure in the U.S.

Last, by allowing this case to proceed, the district court effectively opened a new back door to U.S. courts, inviting plaintiffs to litigate foreign disputes against foreign defendants in U.S. courtrooms under state tort law, in a manner contrary to federal law.

Worse yet, the state law claims that opened the door to this litigation were not even applied in the end. If this decision is upheld on appeal, banks should anticipate a wave of copycat litigation structured to replicate plaintiffs' template or iterations of it.

This result not only risks overwhelming already busy federal courts, but also undermines the predictability and legitimacy of U.S. courts in the eyes of the world.

If allowed to stand, this case could trigger a backlash foreclosing access to the financial markets and the courts for the countries and people that need them the most.

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[1] https://www.bloomberglaw.com/bloomberglawnews/new-york-brief/X799LBK000000?bna_news_filter=new-york-brief#jcite.