

**BNP Paribas S.A. – *Kashef* Litigation (S.D.N.Y.)
Declaration of Prof. Isabelle Romy**

Isabelle Romy, pursuant to 28 U.S.C. § 1746, declares the following:

I. BACKGROUND AND QUALIFICATIONS

1 I am a partner at the law firm Kellerhals Carrard Zürich KIG, one of the largest business law firms in Switzerland. I am registered with the Attorney's Register of the Canton of Zurich, which allows me to practice law in the whole of Switzerland. I joined Kellerhals Carrard as a partner in 2021. Prior to that time and since 2003, respectively 2012, I was a partner in two other business law firms in Zurich. My practice centers in the areas of international litigation, arbitration and private international law.

2 In addition to private practice, I am a Professor of Law and, for more than 25 years, I have been teaching at the University of Fribourg (Switzerland) and at the Federal Institute of Technology in Lausanne (EPFL), Switzerland. Currently, I teach a series of classes on, among other topics, Transnational Litigation and Swiss and European Private International Law. I have also supervised several master and doctoral candidates in various areas, including transnational litigation.

3 I have also served as a Deputy Judge at the Swiss Federal Supreme Court from January 2003 until December 2008. From 2005 until 2008, I was assigned to the 1st Civil Chamber (Première Cour Civile) adjudicating, among other things, cases involving contract, tort, commercial law and issues of private international law related to these topics. From 2003 until 2005, I was assigned to the Criminal Chamber (Cour de Cassation pénale).

4 I am a member of the Swiss Arbitration Association ASA, the Zurich Bar Association (since 1995), the Vaud Bar Association (since 1991) and the Swiss Bar Association (since 1991).

5 I have also been a member of the Sanction Commission of the SIX Swiss Exchange since 2001 and its vice-chairwoman since 2008.

6 I studied law at the University of Lausanne, graduating in 1986. I then completed my doctorate degree (equivalent to a PhD) at the University of Lausanne in 1990. I was admitted to the bar of the Canton of Vaud, Switzerland, in 1991. Later, in connection with my Professorial degree, I was a visiting scholar at Boalt Hall School of Law, University of California at Berkeley from 1992 to 1994 and I completed my Professorial thesis ("Habilitation") at the

University of Fribourg (Switzerland) in 1996. A copy of my professional résumé is attached as Exhibit A.

7 I have authored several publications on topics in various fields including Swiss tort law and joint and several liability. Based upon my experience as a practitioner, a former Deputy Justice at the Swiss federal Supreme Court and a Professor, I believe I am fully competent to discuss authoritatively issues relating to the Swiss judicial system and on matters of substantive Swiss law.

II. SCOPE OF ENGAGEMENT

8 In connection with this Declaration, I have reviewed:

- The Third Amended Complaint (ECF No. 241);
- Defendants' Answer to the Third Amended Complaint (ECF No. 248);
- Defendants' Motion to Dismiss (ECF No. 65) and the parties' briefing in support of and in opposition thereto;
- The Court's Opinion and Order dated 3 March 2020 (ECF No. 151);
- The Court's Opinion and Order dated 16 February 2021 (ECF No. 193);
- Defendants' Motion for Reconsideration (ECF No. 197) and the parties' briefing in support of and in opposition thereto;
- The Court's Memorandum Opinion and Order dated 26 April 2021 (ECF No. 218);
- Plaintiffs' First Set of Requests for Production of Documents;
- The BNPP Defendants' Responses and Objections to Plaintiffs' First Set of Requests for Production of Documents;
- Plaintiffs' First Set of Interrogatories; and
- The BNPP Defendants' Responses and Objections to Plaintiffs' First Set of Interrogatories, and the BNPP Defendants' Supplemental Responses and Objections to Plaintiffs' First Set of Interrogatories.

9 My opinion has been requested on the following matters:

- Whether Switzerland is an adequate alternative forum for Plaintiffs' claims;

- The issues of substantive Swiss law implicated by Plaintiffs' claims;
- The limitations imposed by Swiss law on conducting discovery in Switzerland for purposes of a foreign litigation;
- The comparative availability and convenience of taking Swiss evidence in a Swiss rather than U.S. proceeding.

III. OVERVIEW OF THE SWISS JUDICIAL SYSTEM

¹⁰ Switzerland is a federal union of 26 federating States called "Cantons" and a federal power called "Confederation". The basic features of the Swiss federal system are defined in the Swiss Federal Constitution of April 18, 1999 ("SFC"), which lays out the institutional structure of the State, the respective powers of the Cantons and the Confederation and mechanisms for coordinating the two levels.

¹¹ The Swiss judiciary operates independently of political or commercial influence. This well-known independence flows from Arts. 29 and 30 SFC. Arts. 29 and 30 SFC provide as follows:¹

Art. 29 General Procedural Guarantees

1. *Every person has the right to equal and fair treatment in judicial and administrative proceedings and to have their case decided within a reasonable time.*
2. *Each party to a case has the right to be heard.*
3. *Any person who does not have sufficient means has the right to free legal advice and assistance unless their case appears to have no prospect of success. If it is necessary in order to safeguard their rights, they also have the right to free legal representation in court.*

Art. 30 Judicial Proceedings

1. *Any person whose case falls to be judicially decided has the right to have their case heard by a legally constituted, competent, independent and impartial court. Ad hoc courts are prohibited.*
2. *Unless otherwise provided by law, any person against whom civil proceedings have been raised has the right to have their case decided by a court within the jurisdiction in which they reside.*

¹ This English translation of the provisions of the SFC is taken from a translation made available – for information purposes only – by the Swiss Government on the internet (<http://www.admin.ch/ch/e/rs/1/101.en.pdf>).

3. *Unless the law provides otherwise, court hearing and the delivery of judgments shall be in public.*

12 These provisions of the new Swiss Federal Constitution of 1999 (the former Federal Constitution dated back to 1874) reflect an old tradition in Switzerland separating governmental and legislative powers from the judiciary. A long line of decisions from the Swiss Federal Supreme Court has developed and strengthened this tradition of independence which is a fundamental component of the Swiss judiciary.

13 The constitutional guarantee of an impartial court also means that the applicable procedural codes contain strict rules governing the disqualification and recusal of judges. Typically, such rules provide that a judge is precluded by law from acting in a certain matter if he or a close relative is involved in the matter or has participated at a previous stage in the litigation or generally speaking if there are circumstances indicating that the judge appears to be biased.

14 A civil litigation in Switzerland is governed by the Swiss Federal Code of Civil Procedure ("CCP") that entered into force on January 1, 2011. Before that, for historical reasons, each Canton had its own rules of civil procedure. In an international matter, like in the case at hand, jurisdiction and some procedural issues are governed by the Federal Act on Private International Law of 18 December 1987 ("PILA") and by the relevant international treaties.

15 A civil litigation in all Swiss courts, including the Geneva courts, is typically divided into several phases. During the first phase (the pleading stage), parties submit written briefs that set forth to the court the relevant facts, the legal theories involved, and the evidence the parties want the court to admit. As a general rule in complex cases, each party has the opportunity to file two written briefs, the first being the plaintiffs' statement of claims.

16 A party must prove its case and demonstrate the existence of the alleged facts from which it derives its rights. The parties have an obligation to act in good faith and to cooperate in the evidence-taking procedure. A party may request the court to compel the submission of evidence, such as documents, by another party or a third party.

17 The taking of evidence, including the examination of documents that the parties have submitted and the hearing of witnesses, as a general rule, occurs after the pleading stage is completed. In civil litigation, the taking of evidence is a function undertaken by the judiciary. A Swiss court takes evidence upon motion of the parties, if the court reaches the conclusion that the evidence proposed by a party relates to an issue of fact that is relevant to the determination of the case.

18 Although the taking of evidence is a function undertaken by the judiciary, not by the parties, the parties may submit briefs to the court with evidentiary requests, including the list of the witnesses they would like to be interrogated, and reasons why they are material to

the outcome of the case. Witnesses are examined primarily by the judge. Witnesses who do not speak the native language of the Swiss court, which in Geneva, is French, may testify in their own language through a translator. The parties are allowed to address supplementary questions to the witness, either by asking the judge to present the question to the witness or, if allowed to do so by the judge, by asking the witness directly.

19 The attendance of any witness domiciled in Switzerland is secured through the use of court orders, and the failure of a witness to appear may result in a sanction. Swiss courts are empowered to order third-party witnesses domiciled in Switzerland to appear and to produce documents that would be relevant to the litigation. Swiss courts, by issuing Letter Rogatory through means of international judicial assistance to the competent foreign court, may secure testimony or other evidence from third-party witnesses domiciled outside of Switzerland. The Swiss court will use the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters of March 18, 1970 ("Hague Evidence Convention") to obtain the testimony of a witness domiciled in a country that is a party to the Hague Evidence Convention. Based on the Hague Evidence Convention, the Swiss court may request upon motion of any of the parties that the deposition of the witness abroad takes place by video-link.

20 In complex or technical cases, if the court needs assistance outside of its expertise to assess disputed questions of facts or foreign law, it may on its own initiative, or on motion of either party, appoint an independent expert to render an opinion. The judge, with the parties' participation, prepares the expert's terms of reference. The parties have the opportunity to comment on the questions and to ask for amendment thereof. The expert usually prepares a written report but may be asked to present their findings orally.

21 Depending on the complexity of the case, the proceedings may take from several months to years until the final disposal. In order to expedite the proceedings, the Swiss court may decide to limit the proceedings to individual issues (for example to determine whether the claims are time-barred) or individual prayers for relief (Art. 125 CCP).

22 Once the taking of evidence has been completed, the parties have the opportunity to summarize, or comment on, the result of the evidence proceeding either at a hearing or in the form of a written brief. The court will then issue a written judgment, which may take a few months or up to 18 months in complex cases.

23 Swiss courts award compensatory damages and other forms of relief in appropriate circumstances.

24 In Geneva, proceedings such as the ones at hand would be allocated to the *Tribunal de première instance*. The judges of this court have extensive experience with complex banking matters, including civil torts.

25 Swiss law does not provide for representative class action proceedings of the type that are permitted in the US, but claims by multiple plaintiffs may be brought jointly or

consolidated when (i) the rights and obligations of the joint plaintiffs or defendants are based on similar facts or legal grounds and (ii) the individual cases are subject to the same type of procedure (cf. Art. 71 CCP).

26 Swiss law allows for the execution of judgments in civil actions and appropriate procedures are available to enforce monetary awards in Switzerland. A judgment entered by a Swiss civil court would be recognized and enforceable by a French court without any special procedure being required in accordance with Art. 33 para. 1 Lugano Convention.

27 Civil judgments can be appealed in Switzerland. The highest court of appellate jurisdiction is the Swiss Federal Supreme Court which hears final civil appeals.

IV. PLAINTIFFS CAN BRING THIS ACTION IN SWITZERLAND

1. Forum and Jurisdiction

28 The rules regarding the jurisdiction of a Swiss court in an international dispute are set forth in PILA and the Lugano Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters of October 30, 2007 ("Lugano Convention").

29 Swiss law would consider Plaintiffs' claims as tort claims. Based on Art. 2, 5 para. 3 of the Lugano Convention and Art. 129 PILA, a Swiss court may exercise jurisdiction in a civil claim for tort if any of the following three criteria are met: (1) the defendant is domiciled in Switzerland; (2) the tortious conduct occurred in Switzerland; (3) or the damages or losses occurred in Switzerland.

30 In the case at hand, Plaintiffs allege that the harms they suffered in Sudan were facilitated by the financial services provided to Sudanese Banks and other entities by BNPP Suisse, which I understand is not a named Defendant in this case. The locus of the tort allegedly committed by the Defendants occurred in Geneva, so that the Geneva court would have jurisdiction over BNP Paribas SA ("BNPP") based on Art. 5 para. 3 Lugano Convention. A Swiss Court would have jurisdiction over BNP Paribas US Wholesale Holdings, Corp ("BNPP-NA") based on Art. 129 PILA if there is a sufficient connection between this defendant and the tortious conduct that occurred in Switzerland.

31 In any case, a foreign Defendant may consent to jurisdiction and the Swiss court may not decline its jurisdiction if Swiss law applies to the matter in dispute pursuant to this Statute (Art. 5 para. 3 and 6 PILA).

32 I am personally aware of at least one recent case (in which I provided an opinion in support of the motion to dismiss filed by the defendant bank), which involved tort claims brought by a non-customer against a bank for alleged injuries caused by the bank's conduct, where the plaintiffs had their U.S. action dismissed under the *forum non conveniens* doctrine

and have subsequently re-filed their action in Switzerland. Because Swiss civil dockets are not publicly available and the existence of the case in Switzerland has not been made public, the action cannot be identified. My knowledge of the existence of such case is based on discussions with counsel involved with the litigation.

2. Substantive law

33 Plaintiffs' claims would be considered tort claims under Swiss law. Art. 41 CO² sets forth the general rule regarding civil liability originating from tort. Art. 41 para. 1 CO provides that "*Whoever unlawfully causes damage to another, whether willfully or negligently, shall be liable for damages.*"

34 Art. 41 CO does not enumerate specific categories of tort. In order to succeed on a claim based on tort for economic loss, a plaintiff must state and prove the four following elements required under Art. 41 CO: (1) damage suffered by the injured person/plaintiff; (2) an unlawful act by the tortfeasor/defendant in relation to a protected interest of the injured person/plaintiff; (3) a causal link between the unlawful act of the tortfeasor and the damage suffered by the injured person; and (4) fault.

35 In the case at hand, I understand that in its opinion dated February 16, 2021 the Court ruled that Plaintiffs' primary liability tort claims were dismissed for failure to state a claim under Swiss law. The claims for secondary tort liability based on Art. 50 para. 1 CO were allowed to proceed. I will hence focus my analysis primarily on Art. 50 CO³.

36 Art. 50 para. 1 CO provides that "*Where several persons have together caused a damage, whether as instigator, perpetrator or accomplice, they are jointly and severally liable to the person suffering damage.*"

37 In its decision of February 16, 2021 the Court reached the conclusion that Plaintiffs have stated a claim for relief under Art. 50 para. 1 CO because they "have plausibly alleged that BNPP consciously cooperated with the Sudanese regime, either knew or should have known that its assistance was contributing to the Regime's human rights abuses, and that this assistance was the natural and adequate cause of Plaintiffs' injuries".

38 However, Plaintiffs' claims based on Art. 50 para. 1 CO are novel and continue to present disputed questions of Swiss tort law:

39 First, Plaintiffs' theory of secondary tort liability does not have a clear analogy in existing Swiss case law. There is a paucity of decisions on Art. 50 para. 1 CO and they do not address even remotely comparable facts, namely whether a bank would be liable for the

² Official French version and unofficial English translation attached as Exhibit B.

³ Official French version and unofficial English translation attached as Exhibit C.

human rights violation committed by a foreign government by knowingly providing said government financial services⁴.

⁴⁰ Second, the precise scope of liability under Art. 50 para. 1 CO remains the topic of extensive debates among legal scholars⁵.

⁴¹ Adjudicating Plaintiffs' claims under Art. 50 para. 1 CO, and determining whether Defendants in fact engaged in conduct giving rise to liability under that provision, will require the court to decide highly controversial issues of Swiss tort law. For this reason, the present case will receive special attention by Swiss scholars. One of them, Professor Corinne Widmer Lüchinger, from the University of Basel, has concluded her review of the USDC SDNY decision of 2018 and the decision of the US Court of Appeal for the Second Circuit of 2019 with the following remarks: "Whether a bank, by providing services, is liable under Swiss law for indirectly contributing to human rights violations by a foreign state depends to a significant extent on the interpretation of Art. 50 para. 1 of the Swiss Code of Obligations, which has been controversial to date. An American court may now have to decide this issue for the first time."⁶ She concluded her more recent review of the February 16, 2021 decision with the following observation: "From a Swiss perspective, the court entered uncharted territory. Whether a Swiss court, which has to apply the law ex officio, would come to the same conclusion seems anything but certain"⁷.

V. SWISS LAW IMPOSES LIMITATIONS ON FOREIGN DISCOVERY

1. Swiss Sovereignty and Article 271 of the Swiss Penal Code

⁴² As I have described, Switzerland subscribes to the typical civil law view that the taking of evidence is a judicial function to be carried out exclusively by domestic courts or authorities. If evidence were taken by a foreign authority or by parties to a foreign proceeding without the participation or consent of a competent Swiss court, Swiss sovereignty would be considered to be violated. Art. 271 SPC protects Swiss judicial sovereignty by making it

⁴ See Corinne Widmer Lüchinger, Die Haftung von Banken bei Menschenrechtsverletzungen durch ausländische Staaten – zugleich ein Beitrag zu Art. 41 und 50 OR, in *Theorie und Praxis des Unternehmensrechts, Festschrift zu Ehren von Lukas Handschin*, 2020, p. 785 seq, 790, attached as Exhibit D; Corinne Widmer Lüchinger, Solidarische Haftung einer Bank für Menschenrechtsverletzungen im Sudan, in *SZW/RSDA* 4/21, p. 526 seq, attached as Exhibit E.

⁵ See Corinne Widmer Lüchinger, p. 796, Exhibit D; see also Franz Werro, N. 11 ad Art. 50 in *Commentaire romand, Code des Obligations I*, 2021; Vincent Perritaz, *Le concours d'actions et la solidarité*, dissertation Fribourg, Geneva 2017 ; L'art. 50 al. 1 CO : une norme qui fonde la responsabilité ? *AJP* 2018, 795 seq. In favour of a mere joint and several liability : Oftinger/Stark, *Schweizerisches Haftpflichtrecht*, BT, 1987, p. 100.

⁶ Corinne Widmer Lüchinger, p. 800, Exhibit D.

⁷ Corinne Widmer Lüchinger, in *SZW/RSDA* 4/21, p. 537, attached as Exhibit E.

unlawful for any person or entity to take any action reserved to the public authorities in Switzerland, including the judicial function. Art. 271(1) SPC reads as follows:⁸

Any person who carries out activities on behalf of a foreign state on Swiss territory without lawful authority, where such activities are the responsibility of a public authority or public official, any person who carries out such activities for a foreign party or organisation, any person who encourages such activities, is liable to a custodial sentence not exceeding three years or to a monetary penalty, or in serious cases to a custodial sentence of not less than one year.

43 Art. 271(1) SPC prohibits, in particular, the taking of evidence on Swiss territory by foreign officials and attorneys as well as the direct service of documents by mail or through Swiss lawyers.

44 Under Swiss law, a unilateral attempt by a foreign court to compel the release of documents or information from Switzerland without the participation or consent of the Swiss authorities would be an infringement of Swiss sovereignty. Under Swiss law, to compel a party or a third party custodian of records in Switzerland to produce information or documents, a foreign court must use the available processes for international legal and/or administrative assistance, thereby requesting the competent Swiss authorities to exercise their judicial power.

45 For the same reasons, a foreign court could not compel the testimony of Swiss-resident witnesses.

46 Violations of Art. 271 SPC are punishable by up to three years in prison and/or monetary fine. Violation of Art. 271 SPC is an *ex officio* offence which means that the state will prosecute any violation even if the injured party has not filed a complaint, and actively enforced. The Swiss Federal Office for Statistics reports 18 cases for the period from 1984 through 2020 in which a person was convicted for violating Art. 271 SPC (Exhibit G).

47 To comply with Art. 271 SPC, evidence-gathering in Switzerland in aid of a foreign proceeding must be done through internationally agreed channels, such as the Hague Evidence Convention.

2. Banking Privacy and Data Privacy Protections

48 The Complaint describes claims that are based on banking transactions relating to accounts located in Switzerland. Information regarding these banking transactions is governed by banking privacy protection pursuant to Art. 47 of the Federal Act on Banks and Savings Banks ("Swiss Banking Act" or "BA") of November 8, 1934 that protects any customer-related information of a bank and applies to all bank customers – Swiss and foreign.⁹ Art. 47

⁸ Official French version and unofficial English translation attached as Exhibit F. I have slightly amended the unofficial translation to be more accurate.

⁹ Official French version and a certified English translation are attached as Exhibit H.

BA, together with Arts. 271 and 273 SPC,¹⁰ imposes limitations on discovery of evidence both in domestic and foreign proceedings. A violation of Art. 47 BA is an *ex officio* offense. The *ex officio* nature of the offense indicates the strong interest under Swiss law in protecting financial privacy against all kinds of intrusion.

49 The Swiss Federal Data Protection Act ("DPA") contains rules restricting the processing and disclosure of personal data by private parties in Switzerland. The term "personal data" comprises all information relating to an identified or identifiable person (be it an individual or a corporate entity) (Art. 3 lit. a DPA). Under the DPA, data is deemed as being processed when it is collected, transferred, published, disseminated or even simply made available for consultation (Art. 3 lit. e and f DPA). The DPA does not apply to pending Swiss civil proceedings (Art. 2 par. 2 lit. c DPA). The DPA imposes strict limitations on the disclosure on personal data in the United States unless the documents are sought through the Hague Evidence Convention procedures.

50 In short, efforts by a litigant or court outside of Switzerland to gather evidence in Switzerland for use in a U.S. proceeding would not be permitted to proceed in Switzerland without extensive oversight by a Swiss court. If the action at hand is to proceed in the United States District Court, Southern District of New York, with respect of the information described above, the production of documents held by BNPP Suisse or the deposition of Swiss-resident witnesses would only be possible pursuant to the Hague Evidence Convention. Otherwise Art. 47 BA, Art. 271 and Art. 273 SPC would be violated, exposing all the officers and employees of BNPP Suisse involved in the disclosure to criminal prosecution, incarceration or monetary fines.

VI. COMPARATIVE AVAILABILITY OF SWISS EVIDENCE IN U.S. AND SWISS PROCEEDINGS

51 If this matter were to proceed in Switzerland, the Swiss court could take live testimony of Swiss witnesses in their native language, like BNPP Suisse employees. Information protected by Art. 47 BA may be disclosed upon a disclosure order of the court in the course of the Swiss domestic civil proceedings. Furthermore, as noted above, the DPA will not apply to disclosures for purposes of a Swiss civil proceeding.

52 The same cannot be said if this action remains in the United States. Indeed, a U.S. court could not compel the live testimony of Swiss-resident witnesses nor the production of documentary evidence located in Switzerland for purposes of U.S. litigation without a proper request under the Hague Evidence Convention. The production of documentary evidence


¹⁰ Art. 273 SPC protects Swiss sovereignty, the Swiss national economy and the economic interests of private Swiss corporations or individuals by prohibiting the disclosure of trade or business secrets to foreign authorities or private parties outside of the proper judicial assistance channels. See Exhibit I.

subject to Swiss bank confidentiality and data privacy restrictions outside of the proper judicial assistance channels would expose the producing parties to criminal and other sanctions.

VII. STRONG INTEREST OF SWITZERLAND TO SUPERVISE BANKS

⁵³ Finally, Switzerland possesses a strong interest in regulating and supervising the conduct of banks and banks' representatives within its borders as demonstrated *inter alia* by the sanctions regime imposed by Switzerland on transactions related to Sudan. The Swiss sanctions implemented by Switzerland on May 25, 2005 included arms embargos, travel bans on individuals designated by the United Nations Security Council Committee concerning the Sudan and the freezing of funds and economic resources owned or controlled by individuals and entities designated by the same Committee.¹¹

Executed in Zurich, Switzerland, on December 8, 2021.


ISABELLE ROMY

¹¹ See Ordinance of the Swiss Federal Council on measures against Sudan of 25 May 2005, implementing United Nations Security Council Resolutions 1556 (2004) and 1591 (2005).

Exhibits

- A. Professional résumé of Isabelle Romy
- B. Official French version and unofficial English translation of 41 of the Swiss Federal Code of Obligations of 30 March, 1911
- C. Official French version and unofficial English translation of 50 of the Swiss Federal Code of Obligations of 30 March, 1911
- D. Corinne Widmer Lüchinger, Die Haftung von Banken bei Menschenrechtsverletzungen durch ausländische Staaten – zugleich ein Beitrag zu Art. 41 und 50 OR, in Theorie und Praxis des Unternehmensrechts, Festschrift zu Ehren von Lukas Handschin, 2020, p. 785 seq, 790, and a certified English translation
- E. Corinne Widmer Lüchinger, Solidarische Haftung einer Bank für Menschenrechtsverletzungen im Sudan, in SZW/RSDA 4/21, p. 526 seq, and a certified English translation
- F. Official French version and unofficial English translation of Art. 271 of the Swiss Penal Code of December 21, 1937
- G. Swiss Federal Office for Statistics condemnation of Art. 271 SPC from 1984 to 2020
- H. Official French version of Art. 47 of the Federal Act on Banks and Savings Banks of November 8, 1934, and a certified English translation
- I. Official French version and unofficial English translation of Art. 273 of the Swiss Federal Penal Code of December 21, 1937